SD
11
.A1
A42
S
ND
600

United States
Department of
Agriculture

Forest Service

**State and Private
Forestry**

FS-600

April 1997

Previous editions
obsolete

Forest Service National Resource Book on American Indian and Alaska Native Relations

United States
Department of
Agriculture

Forest Service

**State and Private
Forestry**

FS-600

April 1997

Previous editions
obsolete

Forest Service National Resource Book on American Indian and Alaska Native Relations

Table of Contents

Preface vii

Executive Summary xi

Introduction 1
Definitions of Indian Tribe, Indian, Indian Country, and Indian Homeland 3
Indian Tribe 3
Indian 3
Indian Country 3
Indian Homelands 3
Indian Nation Demographics 5
Indian Population 5
Indian Land and Resources 6
American Indian/Alaska Native Policy: Memorandum from President Clinton, 1994 7
American Indian/Alaska Native Policy Statement: USDA Forest Service, Washington Office 8
Development of U.S. American Indian Policy 9
Pre-Constitutional Policy (1532–1789) 9
American Indian Tribal Sovereignty—Nations Within a Nation 9
The Formative Years (1789–1871) 17
Federal Power 17
The Trade and Intercourse Acts and Tribal Property Rights 17
Treaties With Indian Tribes 18
Removal Era 19
The End of Treaty Making 19
The Reservation System (1853) 20
Indian Country in Alaska 20
Tribal Governments and Their Status in Alaska 20
California Tribes 21
The Era of Allotment and Assimilation (1871–1928) 22
Indian Allotments 22
Assimilation 23
The Indian Citizenship Act of 1924 23
Indian Reorganization (1928–1945) 23
The Meriam Report 24
The Indian Reorganization Act of 1934 24
Tribal Self-Government 24
The Termination Era (1945–1961) 25
The Indian Claims Commission Act of 1946 25
The Termination Acts 26
Public Law 280 27

Other Policies of the Termination Era 27
The "Self-Determination Era" (1961–Present) 28
Congressional Action 28
Executive Action 29
Judicial Action 30
Tribal Action 30

Section 1: The Governmental Relationship 33
The Doctrine of Tribal Sovereignty 34
Fundamental Powers of Indian Tribes 35
Attributes of Sovereignty 35
Powers of Alaska Native Tribes and Groups 35
Government–to–Government Relations: Consultation 36
Whom to Consult 36
Conducting Consultation 37
Laws That Require Consultation 37
Communication 38
Intertribal Groups and Organizations 38
Status of Federally Recognized Indian Tribes 38
Federally Recognized Indian Tribes 38
Consultation With Other Groups and Individuals 40

Section 2: Treaty Rights and Forest Service Responsibilities 41
Alaska Native Rights on Federal Lands 42
Treaties 43
Treaty Language 43
Treaty Rights on National Forest System Lands 44
Off-Reservation (Property) Rights 44
Characteristics of Treaty Rights 45
Grazing Rights 45
Hunting and Fishing Rights 45
On-Reservation Rights 45
Off-Reservation Rights 46
Gathering Rights and Interests 46
Water Rights 46
Indian Reserved Water Rights 46
Alaska Native Subsistence Rights 47
Trust Responsibilities 51
NEPA Consultation 53
Cooperation in Management 58

Section 3: Addressing Traditional Beliefs and Practices 59
Traditional Beliefs 59
Practices/Uses/Sites of Spiritual Importance 60
Laws Affecting Management of Historic, Cultural,
and Traditional Uses of National Forest System Lands 61
Antiquities Act 62
Archaeological Resources Protection Act (ARPA) 62
American Indian Religious Freedom Act (AIRFA) 62
American Indian Religious Freedom Act Amendment 63
Religious Freedom Restoration Act 64

Native American Graves Protection and Repatriation Act (NAGPRA) 64
National Historic Preservation Act (NHPA) 64
Indian Sacred Sites—Executive Order 13007 65
Summary 66

Section 4: Opportunities for Research, Transfer of Technology, and Technical Assistance 67
Collaboration on Ecosystem Management 68
Collaboration in Research 69
Collaboration on Technical Assistance 70
Additional Opportunities 72

References 73

Appendix A: Authorities, Major Laws, and Regulations That Pertain to the Forest Service A–1

Appendix B: Definitions B–1

Appendix C: Federally Recognized Indian Tribes C–1

Appendix D: Indian Nations D–1

Index I–1

Preface

To describe and improve implementation of the Forest Service's American Indian/Alaska Native Policy (FSM 1563), the Washington Office appointed a task group to create a National Tribal Resource Book. The creation of this book was part of a remarkable convergence of people and events. In 1994, President Bill Clinton held a Tribal Summit, hosting elected representatives from all Federally Recognized tribal governments within the United States, where he articulated the government-to-government policy of his administration.

Managing ecosystems involves coordination and communication across administrative boundaries. Customer service, as articulated by President Clinton and former Forest Service Chief Jack Ward Thomas, is the order of the day; and reinvention in the public sector challenges us all to reexamine the way we are doing business to see if it can be done better. Tribal governments figure prominently in all of these topics.

This book is intended only to improve the implementation of the Forest Service's American Indian and Alaska Native Policy; it is not intended to nor does it create enforceable rights.

The Deputy Chief, State and Private Forestry, carries out the American Indian and Alaska Native program servicewide and in the Washington Office. Regional Foresters, Station Directors, and Area Directors are responsible for establishing and implementing an effective American Indian and Alaska Native program. Line and staff at all organizational levels are responsible for implementing a comprehensive American Indian and Alaska Native program (FSM 1563.04).

This resource book provides Forest Service leadership with critical information to develop or improve government-to-government relations with all Federally Recognized American Indian and Alaska Native Tribes.

While the information in this document is national in scope, Forest Service regions and national forests may create their own resource books to supplement topics and more specifically address tribal governments within their local areas.

This document reflects the following key principles:

- *Indian tribal governments possess inherent powers of self-government.*
- *No two tribal governments are exactly alike.*
- *There are no single or standard answers for any given issue that can be equally applied to all tribes.*
- *Forests and regions need to communicate and consult directly with each sovereign tribe about related laws, treaties, policies, and Forest Service activities.*

Tribal governments have reviewed this book.

Acknowledgments

This resource book could not have been completed without the commitment and passion of the American Indian/Alaska Native Policy Task group. Their commitment to the Forest Service and its mission, as well as their passion for and vision of servicewide implementation of the Forest Service's American Indian/Alaska Native Policy made the creation of this book a reality. It is with sincere appreciation and gratitude that we recognize the following committee members:

Pat Aguilar, Assistant Director, State and Private Forestry, Rocky Mountain Region

Mike Beckes, Regional Archeologist, Regional Office, Northern Region

Betty Blair, Forest Service Liaison to the Environmental Protection Agency, Land Use Planning, Washington Office

Norene Blair, Public Affairs Specialist, Washington Office

Marsha Butterfield, Realty Specialist, Lands, Washington Office

Tim Curtis, Tribal Government Program Manager, Eastern Region (retired)

Evan DeBloois, Federal Preservation Officer, Heritage, Washington Office

John Foss, Alaska Native Liaison Officer, Regional Office, Alaska Region

Paul Haarala, Realty Specialist, Washington Office (retired)

Dean Graham, Regional Office, Intermountain Region

Susan Johnson, Forest Health Management Biologist, Regional Office, Rocky Mountain Region

Ira Jones, Tribal Government Program Manager, Regional Office, Northern Region (retired)

Joseph D. Mitchell, Natural Resource Manager, Washington Office (detached), Fort Collins, CO

Jill Osborn, Heritage, Washington Office (detached), Boise, ID

Joyce Patterson, Illustrator, Rocky Mountain Station

Allen Pinkham, Nez Perce Tribal Government Liaison, Northern Region

Rhey Soloman, Deputy Director, Ecosystem Management, Washington Office

Jim Smalls, Regional Office, Eastern Region

Sonia Tamez, Program Manager, Tribal Relations, Regional Office, Pacific Southwest Region

Bob Tippeconnie, Tribal Government Program Manager, Washington Office (retired)

Shirley Twiggs-Johnson, Tribal Government Program Manager, Regional Office, Southern Region

Gilbert Vigil, Acting Director, Cooperative and International Forestry, Southwestern Region

Rich Williamson, Personnel, Regional Office, Northern Region (retired)

Arnold Wilson, Southwestern Region

Cheryle Zwang, Public Affairs Specialist, Regional Office, Northern Region

Executive Summary

Many National Forest System lands are adjacent to American Indian or Alaska Native Tribes or tribal lands. Federally Recognized Indian tribal governments have a unique government-to-government relationship with the United States Government. In some cases, tribal governments have reserved rights on what are present-day national forests or grasslands that were retained when the tribes relinquished lands to the United States Government. Today, more than ever, Indian tribes, as sovereign governments, are asserting their interests and rights and increasing their governmental capabilities. For all these reasons, it is essential that Forest Service leaders and employees do the following with tribes through the many Forest Service programs in the National Forest System, Research, State and Private Forestry, International Forestry, Human Resources, and others:

- Become knowledgeable.
- Pursue partnerships, research, and technical assistance.
- Establish two-way exchanges of information.

The focus of this resource book is to help Forest Service line officers and employees gain a clear understanding of how to implement the U.S. Government's and the Forest Service's American Indian and Alaska Native policies. The book should foster an appreciation of tribal governments and help the Forest Service further develop effective relationships. Use of this book along with training and action should further the development of this essential relationship. This document is to be distributed to Forest Service and other Federal agencies, American Indian and Alaska Native Tribes, and American Indian and Alaska Native institutions and organizations.

Introduction

There are three sovereigns in the government-to-government relationship: tribes, states, and the U.S. Government. Those three sovereigns need to work together to solve problems with three principles—honesty, open-mindedness and willingness.

—Chief William Burke
Confederated Tribes of the Umatilla Reservation
Washington, D.C.—Opening Ceremony
USDA National American Indian Heritage Month—1994

The Forest Service's success in establishing and maintaining the government-to-government relationship will be based on an appreciation of and about Indian Country and those attributes unique to respective national forests and grasslands and local tribes. This concept is fundamental and critical to relationships and interactions. Effective relations with tribal governments are not a single event—they are a continuous process.

The laws that affect the management of National Forest System lands and the rights and programs affecting American Indians are evolving on many fronts—in court decisions, in statutes passed by Congress, and in executive orders and other actions of the President and the executive branch. Forest Service leaders and managers need to be aware of these evolving legal requirements.

Court decisions may be referenced in this resource book. Remember that a court decision is a determination of the law as it is applied to a given set of facts and circumstances. References to court decisions may include the general direction of the law, but those decisions may not apply to a different set of facts. This guide is not meant to be the sole guide in dealing with legal issues or interpreting court decisions. Consult the Office of General Counsel (OGC) on legal issues or interpretation of court decisions or treaty rights or claims related to Indian tribes.

The challenge facing the Forest Service today is to reconcile many requirements of law so that National Forest System lands can be administered in a way that meets public needs while recognizing the rights of Indian tribes.

The focus of this book is to help Forest Service employees gain a clearer understanding of how to implement the U.S. Government's and the Forest Service's American Indian and Alaska Native policy. It should foster an appreciation of tribal governments and help the Forest Service further develop effective relationships with American Indian and Alaska Native Tribes.

The sections of this book correspond to the tenets of the Forest Service's four-point American Indian/Alaska Native policy (FSM 1563). A complete statement of this policy is in Appendix A.

1. *Maintain a governmental relationship with Federally Recognized tribal governments.* Section One of this book is "The Governmental Relationship."

2. *Implement Forest Service programs and activities honoring Indian treaty rights, and fulfill legally mandated trust responsibilities to the extent that they are determined applicable to National Forest System lands.* Section Two of this book is "Treaty Rights and Forest Service Responsibilities."

3. *Administer programs and activities to address and be sensitive to traditional Native religious beliefs and practices.* Section Three of this book is "Addressing Traditional Beliefs and Practices."

4. *Provide research, transfer of technology, and technical assistance to Indian governments.* Section Four of this book is "Opportunities for Research, Transfer of Technology, and Technical Assistance."

Through use of this resource book, leaders, managers, and staff who interact with American Indian and Alaska Native governments should be able to carry out their duties in a knowledgeable, responsive, and respectful manner.

Definitions of Indian Tribe, Indian, Indian Country, and Indian Homeland

Indian Tribe. Although the term "Indian tribe" can be used in both an ethnological and legal-political sense, this book focuses on the definition of an Indian tribe as a political entity. Historically, the Federal Government has determined that it will recognize particular groups or Indian tribes under the *Indian Commerce Clause of the U.S. Constitution*. Thus, tribes which are "Federally Recognized or acknowledged" are considered Indian tribes or tribal governments for legal purposes. Indian groups not recognized under Federal law may seek recognition through litigation,[1] Bureau of Indian Affairs (BIA) administrative procedures, [2] or congressional statute.[3] A list of the Federally Recognized Tribes is in Appendix C.

Indian. An Indian is a person recognized as an Indian by that person's tribe or community. Tribal membership requirements can be established by usage, written law, treaty, or intertribal agreement.[4] Today, membership is typically defined by a tribal constitution, tribal law, or a tribal roll—varying degrees of blood quantum are required by different tribes. While membership in a Federally Recognized Tribe is the general criteria used by the BIA for participation in most Federal programs,[5] a blood standard is also used alternatively for eligibility for some programs.[6] In recent years, Congress has not allowed the BIA to rely solely on a blood standard for a few of its Federal programs.[7]

It is important to understand the difference between the ethnological term "Indian" and the political/legal term "Indian." The protections and services the United States provides tribal members do not flow from an individual's status as an American Indian in an ethnological sense, but because that person is a member of a Federally Recognized Tribe with which the United States has a special trust relationship. This trust relationship entails certain legally enforceable obligations, duties, and responsibilities.

Indian Country. Indian Country is described as the territorial boundaries of Indian tribal governments. While the term "Indian Reservation" is popularly used to identify geographical limits of tribal power or jurisdiction, the relevant legal term is "Indian Country." *Indian Country* is defined specifically by Federal statute (18 U.S.C. §1151) and includes all land, regardless of ownership, within the exterior boundaries of Federally Recognized Indian reservations (USDI, Office of American Indian Trust).

Indian Homelands. Land ownership patterns within the exterior boundaries of Indian reservations vary. In some cases, such as the North Carolina Cherokee and the White Mountain Apache in Arizona, all lands within the reservation boundaries are held in trust by the United States.

---

[1] See Joint Tribal Council of Passamaquoddy Tribe v. Morton, 528 F.2d 370 (1st Cir. 1975).
[2] 25 CFR 83.
[3] Pascua Yaqui Recognition Act, September 18, 1978, Pub. L. No. 95–375, 95 Stat. 712 (codified at 25 U.S.C.A. §1300f to 1300f-2).
[4] Delaware Indians v. Cherokee Nation, 193 U.S. 127 (1904).
[5] See Zarr v. Barlow, 800 F.2d 1484, 1485, n.1 (9th Cir. 1986).
[6] Zarr v. Barlow, 800 F.2d 1484 (9th Cir. 1986); see also 25 CFR §20.1 (n) (1986).
[7] See Zarr v. Barlow, 800 F.2d at 1489–93.

On other reservations, all land within the boundaries is Indian-owned, but some is tribal trust land, and some is held in trust for individuals, with the United States acting as trustee for the individual allottee (or his or her heirs).

Some lands are owned through purchase by non-Indians.

In the lower 48 states, there are 46.2 million acres of Indian trust land and 8.9 million acres of individual trust allotments.

The majority of reservations include within their boundaries not only tribal trust land and individual trust allotments but a third category—land owned in unrestricted title, usually by non-Indians. This third category was the result of the government acquiring and then opening tribal land for homesteading to non-Indians in the late 19th century with the *General Allotment, or Dawes, Act* or the expiration of trust periods on some allotments—allowing non-Indians the right to purchase land directly from the allottees or heirs. In very few cases, non-Indian land predominates a reservation. For example, 46 percent of the land within the boundaries of the Swinomish Reservation in Skagit County, Washington, is owned by non-Indians, and 20 percent of the Indian trust land is leased to non-Indians.

Tribes usually have jurisdiction over "Indian Country" (see Appendix B). Tribal regulatory jurisdiction may, therefore, extend to an area significantly larger than the lands actually in Indian ownership. Many reservations are a tiny fraction of the tribe's aboriginal territory.

Tribes own 6.3 million acres of commercial timber land or about 1 percent of the Nation's total commercial forest land. More than 43 million acres, or 77 percent of all Indian land (excluding Alaska), are classified as grassland.

The original source for this text is *Federal Indian Law: Cases and Materials*, 3rd Edition, by David H. Getches, Charles F. Wilkinson, and Robert A. Williams, Jr. Some of the material has been directly quoted with the permission of the publisher; some has been paraphrased.

Indian Nation Demographics

Most reservations are west of the 100th meridian, a north-south line running through the center of Nebraska. There are—

- 557 Federally Recognized American Indian and Alaska Native Tribes (as of 1996)
- 314 reservations, 278 of which are administered as Federal Indian reservations

American Indians and Alaska Natives have a land base of approximately 615,210 square miles. The landholdings of the tribes vary widely. The Navajo reservation consists of more than 15 million acres of land in Arizona, New Mexico, and Utah—an area larger than West Virginia and eight other states. In North and South Dakota, Sioux reservations account for about 5 million acres. There are Federally Recognized Tribes that have no land. A table of the thirty largest landholding tribes is located in Appendix D. The latest list of Federally Recognized Tribes can be found in Appendix C along with a map of where they are located.

Many Indian reservations are adjacent to National Forest System lands. At present, there are 56.6 million acres of Indian lands in the United States. After the Alaska Native land selections are completed, almost 5 percent of all land in the United States will be in American Indian/ Alaska Native ownership.

Indian Population

The size of the tribe does not necessarily correlate with the size of tribal landholdings. During the 1990 census, more American Indians identified themselves as Cherokee than any other tribal affiliation. The Cherokee Tribe lost most of its ancestral land in the Southeast when the tribe was "removed" to Oklahoma in the 1830's. The Navajo Nation, the second largest in population, has the largest reservation.

One-hundred and sixteen (116) tribes have more than 1,000 members. At least 1,000 Indians, in 35 different states, reported themselves as Cherokee; Sioux in 15 states; Chippewa in 9 states; and Iroquois in 8 states. The four largest groups of American Indians as classified by the census (including both on- and off-Indian-land residents) are the Cherokee, the Navajo, the Chippewa, and the Sioux. The states with the highest American Indian and Alaska Native populations are Oklahoma, California, Arizona, New Mexico, and Alaska.

The American Indian population increased from 357,499 in 1950 to 523,591 in 1960, to 792,730 in 1970, and to 1,418,195 in 1980. At the 1990 census, 1,959,000 persons, or eight-tenths of one percent of the Nation's population, reported themselves as American Indians (Figure 1.). This enormous increase is based, in part, on improved census methods and increasing birth rates. More than 1,878,000 people are ethnically American Indians, and approximately 54,453 are Yupiks, Inuits, and Aleuts.

Today, approximately half of the Indian population lives on or adjacent to reservations or Indian communities. Due in part to the Federal termination and relocation programs of the 1950's and 1960's, the other half lives in urban areas. Almost three-fourths of that urban Indian population live in metropolitan areas with populations of more than one million.

Indian Land and Resources

Indian tribes and Indian individuals own approximately 56.6 million acres of land (in the lower 48 states)—an increase of more than 4 million acres since 1980. American Indian and Alaska Native landholdings are growing as tribes are reacquiring territories lost. Tribes are buying acreage, and several court settlements, such as the eastern land claims, have resulted in land transfers and purchases. As the result of the Alaska Native Claims Settlement Act (ANCSA), Alaska Natives hold another 44 million acres not included in the above figures. In all, American Indian and Alaska Native groups hold about 4.2 percent of the land area of the United States. The states containing the most Indian land are Alaska, Arizona, New Mexico, Montana, Oklahoma, and South Dakota (see Appendix D for a complete listing).

American Indian Population, 1990 Census

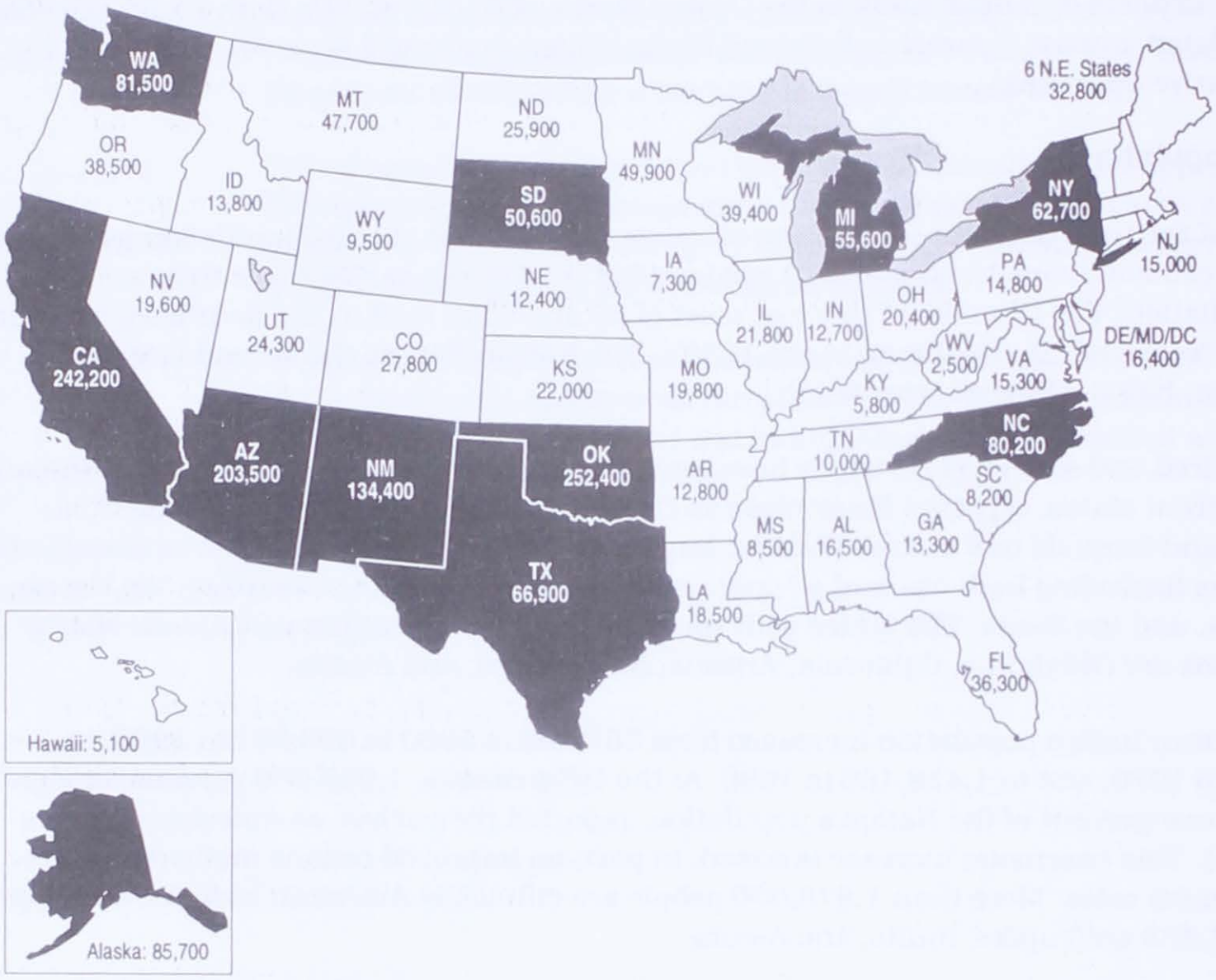


Figure 1.—American Indian Population, 1990 Census (Shaded states have the largest American Indian populations.)

American Indian/Alaska Native Policy

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release April 29, 1994

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Government-to-Government Relations with Native American Tribal Governments

The United States Government has a unique legal relationship with Native American Tribal governments as set forth in the Constitution of the United States, treaties, statutes and court decisions. As executive departments and agencies undertake activities affecting Native American Tribal rights or trust resources, such activities should be implemented in a knowledgeable, sensitive manner respecting of Tribal sovereignty. Today, as part of an historic meeting, I am outlining principles that executive departments and agencies, including every component bureau and office, are to follow in their interactions with Native American Tribal governments. The purpose of these principles is to clarify our responsibility to ensure that the Federal Government operates within a government-to-government relationship with Federally Recognized Native American Tribes. I am strongly committed to building a more effective day-to-day working relationship reflecting respect for the rights of self-government due the sovereign Tribal governments.

In order to ensure that the rights of sovereign Tribal governments are fully respected, executive branch activities shall be guided by the following:

(a) The head of each executive department and agency shall be responsible for ensuring that the department or agency operates within a government-to-government relationship with Federally Recognized Tribal governments.

(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law with Tribal governments prior to taking actions that affect Federally Recognized Tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

(c) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on Tribal trust resources and assure that Tribal government rights and concerns are considered during the development of such plans, projects, programs and activities.

(d) Each executive department and agency shall take appropriate steps to remove any procedural impediments to working directly and effectively with Tribal governments on activities that affect the trust property and/or governmental rights of the Tribes.

(e) Each executive department and agency shall work cooperatively with other Federal departments and agencies to enlist their interest and support on cooperative efforts, where appropriate, to accomplish the goals of this memorandum.

(f) Each executive department and agency shall apply the requirements of the Executive Orders Nos. 12875 ("Enhancing the Intergovernmental Partnership") and 866 ("Regulatory Planning and Review") to design solutions and tailor Federal programs, in appropriate circumstances, to address specific or unique needs of Tribal communities.

The head of each executive department and agency shall ensure that the department or agency's bureaus and components are fully aware of this memorandum, through publication or other means, and that they are in compliance with its requirements.

This memorandum is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

The Director of the Office of Management and Budget is authorized and directed to publish this memorandum in the Federal Register.

William J. Clinton

# # #

American Indian/Alaska Native Policy Statement
USDA Forest Service, Washington Office

It is the Forest Service's responsibility to implement Federal and Forest Service policy (FSM 1563) regarding relationships with Federally Recognized American Indian Tribes.

The Policy

For a complete statement of the policy, see Forest Service Manual 1563; a copy is also provided in Appendix A.

1. **Maintain a governmental relationship with Federally Recognized Tribal governments.**
   - Take the time to meet with tribal governments on a regular basis.
   - Build and enhance a mutual partnership.
   - Gain an understanding of each other to develop an effective governmental relationship.
   - Pursue initiatives and efforts similar to those conducted with State governments.

2. **Implement Forest Service programs and activities honoring Indian treaty rights and fulfill legally mandated trust responsibilities to the extent that they are determined applicable to National Forest System lands.**
   - Visit our tribal neighbors.
   - Learn about their treaties and rights.
   - Talk with them about areas of mutual interest.
   - [Seek to] reconcile Indian needs and claims with the principles of good management, multiple use, and national forest laws and policies.
   - Attempt reasonable accommodation without compromising the legal positions of either the Indians or the Federal Government.
   - Work together to develop ways to accomplish the goals of this policy.

3. **Administer programs and activities to address and be sensitive to traditional native religious beliefs and practices.**
   - Walk the land with American Indians to gain an understanding and appreciation of their culture, religion, beliefs, and practices.
   - Identify and acknowledge these cultural needs in Forest Service activities. We consider these values an important part of management of the national forests.

4. **Provide research, transfer of technology, and technical assistance to Indian governments.**
   - Together, develop research and environmental programs to meet American Indians' objectives.
   - Extend National Forest System, State and Private Forestry, and Forest Service Research programs to tribal governments.
   - Exchange and share technical staffs and skills.

Development of U.S. American Indian Policy

In order to understand the present Indian policy, it is helpful to understand its history. The Forest Service's understanding and implementation of these policies starts on page 33 of this document.

History provides an understanding of American Indian law and policy. Many statutes—enacted in 1790, 1817, 1885 and 1887—still control major Indian issues today. Numerous Indian treaties more than 100 years old, and even one enacted in the 1780's, provide an understanding of the history of Federal Indian policy.

[O]ur Indian law originated, and can still be most closely grasped, as a branch of international law, and...in the field of international law the basic concepts of modern doctrine were all hammered out by the Spanish theological jurists of the 16th and 17th centuries...

—Felix S. Cohen (1942)[8]

Pre-Constitutional Policy (1532–1789)

Between 1492 and the adoption of the U.S. Constitution in 1789, there had been nearly 300 years of legal contracts of various descriptions with American Indians (Cohen 1942). Early European explorers recognized that Indians had occupancy status on lands similar to the well-established European concept of land ownership. As the expeditions and colonists were greatly outnumbered, they also recognized that such lands could only be taken by conquest. In 1630, the Dutch West India Company required that their officials negotiate and purchase land from the Indian leaders of the New Netherlands, thereby recognizing an Indian land ownership status commonly understood by other sovereign nations throughout Europe.

American Indian Tribal Sovereignty—Nations Within a Nation. By 1750, Indian tribes were recognized as sovereigns. In 1754, Benjamin Franklin proposed the formation of a union of colonies following the King of England's suggestion. One of this union's main purposes was an attempt to centralize control over Indians—as the tribes were rapidly forming an allegiance with French settlements and were viewed as a potential threat to the colonies' landholdings (Sheldon 1896). The British Crown rejected such a proposal because they thought it would give the colonies too much independent power. Shortly thereafter, during the French and Indian War, rather than give the colonies the authority that Franklin originally proposed, the English Crown took the sole responsibility for conducting legal and governmental business with Indians. In 1763, the King of England proclaimed the lands west of the Appalachians as Indian Territory—reserved for Indians.

On July 12, 1775, one of the first acts of the Continental Congress was to declare its jurisdiction over Indian tribes by creating three departments of Indian Affairs: Northern, Southern, and Middle Departments. A Commissioner was named for each: Benjamin Franklin, Patrick Henry, and James Wilson, respectively—the quality of the selections is an indication of the importance of these positions.

---

[8] "The Spanish Origin of Indian Rights in the Law of the United States," 31 *Geo. L.J.* 1, 17 (1942).

After the Revolutionary War, the newly independent United States was without financial resources to adequately pay men who had served in the military. The primary asset now in the hands of the new country was land. Therefore, for their service during the Revolutionary War, former soldiers were allowed to select lands. George Washington knew that through prior use and occupancy, Indian peoples had demonstrated ownership in the eyes of the former colonies and other countries. For this new settlement to succeed, a new government land policy needed to be developed.

The Northwest Ordinance, passed by the Continental Congress in 1787, established the governing principles for this new policy. The ordinance included the following provision (Article the Third) to recognize Indian land status, because settlers would surely be in contact with Indian Nations as they moved West:

> *The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them; and for preserving peace and friendship with them.*

With this ordinance, the "territory of the United States, North-West of the River Ohio" was opened for settlement.

The Northwest Ordinance is the first formal acknowledgment of Indian people having an ownership status in the land. *Land ownership* along with the Indians' *superior numbers and habitation* were the basic principles defining the sovereign (independent) status of Indian people. Not all citizens recognized this status, which led to continuous conflict with those living along the frontier.

The adoption of the U.S. Constitution and treaties up to 1871, in combination with other acts of Congress and Supreme Court cases after 1810, contribute to the current well-established *existence of Indian tribes as sovereign (independent) nations*. In 1871, Congress ended the formal treaty-making process with Indian tribes. From thence forward, Indian reservations were established by statute (until 1919) or by executive order of the President. Table 1 (page 11) describes the major laws that defined United States jurisdiction over American Indian affairs and resource management that set the stage for future relations with the American Indians.

An 1831 Supreme Court decision confirmed that Indian Nations were distinct, self-governing political entities that were nonetheless dependent upon the United States as their guardian. This case also described the tribes as "domestic dependent nations"—coining the expression "Nations within a Nation."

Table 1.—Major Statutes of Indian Affairs and Natural Resources

Date	American Indian Acts	Resource Management Acts
1790's	Non-Intercourse Act of July 22, 1790 (1 Stat. 131; 18 U.S.C. 1511 et seq.) extended in 1793, 1796, 1802, and Act of June 30, 1834 (4 Stat. 729; 25 U.S.C. 177) gave the Federal Government authority over American Indian matters and provided a base for Untied States American Indian policy. Trade and Intercourse Act of March 1, 1793 (ch 19, 1 Stat. 3.29) provided for the settling lands belonging to a tribe and forbade the purchase of any horse in Indian territory, without a license; and contained an appropriation to defray the cost of employing agents and to furnish tribes with goods, money, domestic animals, or implements of husbandry for the purpose of promoting Indian assimilation and securing their continued friendship. Trade and Intercourse Act of May 19, 1796 (ch. 30, section 1, 1 Stat. 469) defined the boundaries of then existing Indian Country but allowed them to be modified by treaty. It included a mechanism to compensate citizens for Indian depradations or crimes committed outside Indian Country. Trade and Intercourse Act of March 3, 1799 (ch. 46, 1 Stat 661 et seq.) was comparably worded to the 1796 Trade and Intercourse Act.	Act of May 18, 1796 (ch. 29, 1 Stat. 464; 464–469) provided instructions for establishing the rectangular public land survey system for the sale of public lands so surveyed in the territory northwest of the Ohio River and north of the mouth of the Kentucky River for a public land records system.
Early 1800's	Trade and Intercourse Act of March 30, 1802 (ch. 13, 2 Stat. 139) had several minor amendments or supplementations to the Trade and Intercourse Act of 1799. Indian Removal Act of May 28, 1830 (4 Stat. 411; 25 U.S.C. 174) enabled the President to negotiate in exchange for lands to relocate tribes east of the Mississippi to lands with Indians residing in the territories west of the Mississippi River.	

Table 1.—Major Statutes of Indian Affairs and Natural Resources (continued)

Date	American Indian Acts	Resource Management Acts
	Trade and Intercourse Act of June 30, 1834 (ch. 161, 4 Stat 729) was the single most important measure of Indian-related legislation during the Trade and Intercourse Acts period. It defined the contemporary scope of Indian Country; prohibited alienation of lands by tribes unless the same be made by treaty or convention entered into pursuant to the constitution; provided remedies for the theft or destruction of property; and made liquor or distilleries in Indian Country illegal; provided for the punishment of crimes committed in Indian Country but excluded from such application crimes committed by one Indian against the person or property of another Indian.	
Late 1800's	Indian Appropriations Act of March 3, 1871 (ch. 120, 16 Stat. 566; 25 U.S.C. 71) had a rider attached that effectively ended the President's treaty making by providing that no Indian Nation or tribe shall be acknowledged as an independent nation, tribe, or power with whom the United States may contract by treaty. The Federal Government continued to provide similar contractual relations with the Indian tribes after 1871 by agreements, statutes, and executive orders.	
	Major Crimes Act of March 3, 1885 (23 Stat. 362; 18 U.S.C. 1153) created Federal jurisdiction over seven crimes committed by Indians in Indian Country. It was the first systematic intrusion by the Federal Government into the internal affairs of the tribes.	
	Dawes Act of Feb. 8, 1887 (ch. 119, 24 Stat. 388; 25 U.S.C. 331) provided for the allotment of lands to Indians on various reservations and public domain and extended the protection of United States laws to Indians. Upon receiving an allotment, the allottee became a U.S. citizen. Cessation of Indian tribal holdings and division of lands among them was an attempt at assimilation. It was hoped that they would establish homes, develop lands, and become a part of American society. One of the results was the transfer of more than 80 million acres of Indian lands into private ownership.	

Table 1.—Major Statutes of Indian Affairs and Natural Resources (continued)

Date	American Indian Acts	Resource Management Acts
	Act of March 3, 1891 (ch. 543, 26 Stat. 1035; 16 U.S.C. 471 et seq.) established a court of private land claims. It stated that the court had jurisdiction over Spanish and Mexican land grant claims in Colorado, Nevada, and Wyoming; and all claims in Arizona, New Mexico, and Utah. Once a reservation was fully allotted, Congress usually enacted legislation opening the remaining surplus reservation lands to nonmember settlement: some acts carried out agreements negotiated with tribes for the cession of surplus lands, while other acts unilaterally opened surplus lands to nonmember settlement without tribal consent. This act was for confirming cession agreement.	Organic Administration Act of June 4, 1897 (30 Stat. 18; 16 U.S.C. 473 et seq.) established the National Forest System to improve and protect the forests, secure favorable water flow conditions, and furnish a continuous supply of timber. This act also provided the Secretary of Agriculture with the authority to regulate occupancy and use, and preserve the forest from destruction.
1910's	Allotment Act of June 25, 1910 (P.L. 313, ch. 431, 36 Stat. 855; 25 U.S.C. 331 et seq.) amended the Dawes Act of 1887 and provided for the allotment of land to American Indians occupying, living on, or improving national forest land.	Weeks Law of March 1, 1911 (P.L. 435, 36 Stat. 961; 16 U.S.C. 480 et seq.) authorized and directed the Secretary of Agriculture to acquire forested, cutover, and denuded lands within watersheds of navigable streams necessary to the regulation of the flow of navigable streams or for timber production . Under the act, the lands were permanently reserved, held, and administered as national forests.
1920's	The Indian Citizenship Act of June 2, 1924 (P.L. 175, 43 Stat. 253; 8 U.S.D. 1401b) granted Federal and state citizenship to American Indians, regardless of their land tenure or place of residence. Act of June 7, 1924 (P.L. 254, ch. 331, 43 Stat. 636–642; 28 U.S.C. 111) established the Pueblo Lands Board. This act provided that non-Indians could validate title to previously acquired Pueblo lands.	
1930's	Indian Reorganization Act of 1934 (P.L. 383, 48 Stat 984; 25 U.S.C. 461–62) allowed American Indian tribes to reorganize and adopt bylaws under the Secretary of the Interior; ended allotments in severalty; and gave the Secretary of the Interior the authority to acquire lands inside or outside of reservations for American Indians.	The Bankhead-Jones Farm Tenant Act of July 22, 1937 (P.L. 210, 50 Stat. 522; 7 U.S.C. 1010–1012) authorized and directed the Secretary of Agriculture to develop a program of land conservation and use, to correct poor land use, control soil erosion, monitor reforestation, preserve natural resources, protect fish and wildlife, develop and protect recreation facilities, mitigate floods, conserve surface and subsurface moisture, protect watersheds of navigable streams, and protect the public lands, public health, and welfare.

Table 1.—Major Statutes of Indian Affairs and Natural Resources (continued)

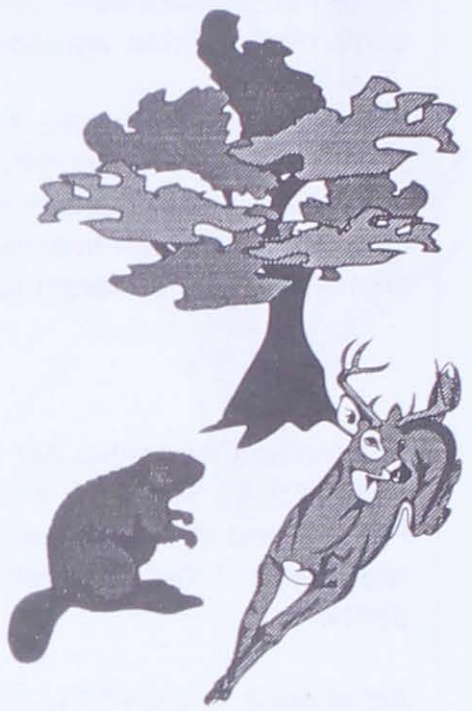
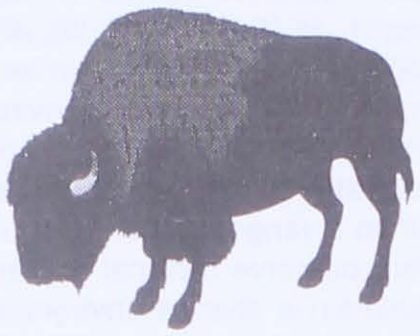
Date	American Indian Acts	Resource Management Acts
1940's	Sustained Yield Forest Management Act of Mar. 29, 1944 (P.L. 273, ch. 146, 58 Stat. 132; 16 U.S.C. 583a-i) section seven of this act requires the consent of American Indians concerning the control or disposition of timber and other forest products on tribal or allocated lands.	Sustained Yield Forest Management Act of March 29, 1944 (P.L. 273, 58 Stat. 132; 16 U.S.C. 583a-i) provided authority to the Secretary of Agriculture and the Secretary of the Interior to establish cooperative sustained units with private and other Federal agencies to provide for a continuous and ample supply of forest products and to secure the benefits of forest in maintenance of water supply, regulation of stream flow, prevention of soil erosion, improvement of climate, and preservation of wildlife.
	Indian Claims Commission Act of Aug. 13, 1946 (P.L. 725, 60 Stat. 1049; 25 U.S.C. 70–70v) established the Indian Claims Commission to determine claims in law or equity arising under the Constitution, laws, treaties of the United States, and all other claims in law or equity, and claims based upon dishonorable dealings not recognized by any existing rule of law or equity.	
1950's	Public Law 280; Act of Aug. 15, 1953 (P.L. 90–280, 67 Stat. 588; 18 U.S.C. 1360) gave jurisdiction to California, Minnesota, Nebraska, Oregon, and Wisconsin, and some other states, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such states and for other purposes.	
1960's	Indian Civil Rights Act of April 11, 1968 (P.L. 90–284, 82 Stat. 77; 25 U.S.C. 1301 et seq.) extended most of the protections of the Bill of Rights to tribal members in tribal governments since the U.S. Constitution does not limit tribal self-government. This act also allowed states with assumed jurisdiction under Public Law 280 to "retrocede" or transfer back jurisdiction to the tribes and the Federal Government.	Multiple-Use Sustained-Yield Act of June 12, 1960 (P.L. 86–517, 74 Stat. 215; 16 U.S.C. 528, 528–531) confirmed that national forests are established and administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes; authorized and directed the Secretary of Agriculture to develop and administer the renewable resources for multiple-use and sustained-yield of services and products; and authorized the Secretary of Agriculture to cooperate with interested agencies in the development and management of the national forests.
		Sikes Act of September 15, 1960 (P.L. 86–797, 74 Stat. 1052; 16 U.S.C. 670g-1,o) provided for Interior/Agriculture coordination with states to develop, plan, and maintain programs for the conservation and rehabilitation of wildlife, fish, and game including, but not limited to, specific habitat improvement projects and threatened or endangered species protection.

Table 1.—Major Statutes of Indian Affairs and Natural Resources (continued)

Date	American Indian Acts	Resource Management Acts
1970's	Alaska Native Claims Settlement Act of Dec. 18, 1971 (P.L. 92–203, 85 Stat. 688; 43 U.S.C. 1601 et seq.), also known as ANCSA, extinguished aboriginal title to lands in Alaska, as well as all aboriginal hunting and fishing rights in the state; and transferred 44 million acres of lands to Alaska Native-owned and -controlled state-chartered corporations.	National Environmental Policy Act of 1969; Act of Jan. 1, 1970 (P.L. 91–190; 83 Stat. 852; 42 U.S.C. 4321 et seq.), also known as NEPA, established national policy to: fulfill environmental trust responsibilities for succeeding generations; assure safe, healthful, productive, and pleasant surroundings; attain a range of beneficial uses without degradation; preserve national heritage and, if possible, maintain a diverse environment; achieve balanced use between people and resources that will permit high quality of life and enhance quality of natural resources.
	Menominee Restoration Act of Dec. 22, 1973 (P.L. 93–197, 87 Stat. 770; 25 U.S.C. 899) provided that after Federal supervision ended, the laws of the several states apply to the tribe and its members in the same manner as they apply to other citizens within their jurisdiction. The tribal hunting and fishing rights survived termination, and Wisconsin could not apply its game and fish laws to the Menominees exercising such rights.	
	Indian Self-Determination and Education Assistance Act of Jan. 4, 1975 (P.L. 93–638, 88 Stat. 2203; 25 U.S.C. 450 et seq.) encouraged tribes, through grants and contracts, to assume program responsibility for Federally funded programs designed for their benefit and previously administered by employees of the Bureau of Indian Affairs and the United States Indian Health Service.	Forest and Rangeland Renewable Resources Planning Act of Aug. 17, 1974 (P.L. 93–378; 88 Stat. 476; 16 U.S.C. 1600; 1600–1614), also known as RPA, directed and authorized the Secretary of Agriculture to assess renewable resources and determine ways and means to balance demand and supply, as well as benefits and uses for the people of the United States. This act also assured national forest plans provide for multiple use, harvest levels and availability, and resource management. In addition, this act specified procedures to ensure plans are in accordance with NEPA (1969) requirements.
	American Indian Religious Freedom Act of Aug. 11, 1978 (P.L. 95–341, 92 Stat. 469, 42 U.S.C. 1996), also known as AIRFA, explicitly recognized the importance of traditional Indian spiritual practices and directed all Federal agencies to ensure that their policies will not abridge the free exercise of Indian religions.	Federal Land Policy Management Act of Oct. 21, 1976 (P.L. 94–579, 90 Stat. 2744, 43 U.S.C. 1701 et seq.), also known as FLPMA, directed the Secretary of Agriculture to coordinate National Forest System land use plans with the land use planning and management programs of and for Indian tribes by considering the policies of approved tribal land resource management programs.
	Indian Child Welfare Act of Nov. 8, 1978 (P.L. 95–608, 92 Stat. 3969–3084; 25 U.S.C. 1901–1961) addressed the transfer of large numbers of Indian children to non-Indian parents in state adoption and guardianship proceedings. The act required many adoptions and guardianship cases be held in tribal court; and established statutory preferences for Indian guardians over non-Indian guardians for those cases heard in state court.	National Forest Management Act of Oct. 22, 1976 (P.L. 94–588, 90 Stat. 2949; 16 U.S.C. 472 et seq.), also known as NFMA, reaffirmed Forest Service statutory responsibility to provide multiple-use and sustained-yield management of products and services, including coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness; and to determine forest management systems, harvesting levels, and procedures for all the above uses.

Table 1.—Major Statutes of Indian Affairs and Natural Resources (continued)

Date	American Indian Acts	Resource Management Acts
1980's		Alaska National Interest Lands Conservation Act of Dec. 2, 1980 (P.L. 96–487, 94 Stat. 2371; 43 U.S.C. 1636), also known as ANILCA, allocated 110 million acres to several Federal conservation systems to protect undeveloped Native fee lands from property taxation and from certain types of foreclosure and involuntary transfer. The settling of the boundaries for the national interest lands clarified the areas available for final selections by the state and by Alaska Natives.
1990's	Native American Graves Protection and Repatriation Act of Nov. 16, 1990 (P.L. 101–601, 104 Stat. 3048; 25 U.S.C. 3001, 3001–3013), also known as NAGPRA, addressed the rights of lineal descendants and members of Indian tribes, Alaskan Natives and native Hawaiian organizations to certain human remains and to certain precisely defined cultural items with which they are related. These items include human remains from graves associated with a particular tribal group or individual offerings or artifacts associated with burials, and important religious items of cultural and spiritual importance to a tribal group. Indian Health Care Improvement Act of Oct. 29, 1992 (P.L. 102–573, 106 Stat. 4526–4592; 25 U.S.C. 1601 et seq.) consolidated Indian Health Service program, authorized funding to improve these programs, and created programs to educate health professionals for work in Indian Country.	

Note: See Appendix A for other laws.

When the United States gave peace, did they not also receive it? Were not both parties desirous of it? If we consult the history of the day, does it not inform us that the United States were at least as anxious to obtain it as the [Indians]?... This relation [in a treaty between the United States and an Indian tribe] was that of a nation claiming and receiving the protection of one more powerful: not that of individuals abandoning their national character, and submitting as subjects to a master.

—Chief Justice John Marshall (1832)[9]

We are assured that, beyond the Mississippi, we shall be exempted from further exaction; that no State authority there can reach us; that we shall be secure and happy in these distant abodes.

—Headmen and Warriors of the Creek Nation, *addressing Congress (1832)*[10]

I will fight no more forever.

—Chief Joseph (1877)[11]

Federal Indian law and policy was shaped by early comprehensive Federal legislation and by three court opinions, written by Chief Justice John Marshall and referred to as the Marshall Trilogy. They are *Johnson* v. *M'Intosh* (1823),[12] *Cherokee Nation* v. *Georgia* (1831),[13] and, perhaps most importantly, *Worcester* v. *Georgia* (1832).[14]

Federal Power. The *Indian Commerce Clause, Article I, Section 8, Clause 3 of the U.S. Constitution* provides Congress with broad powers. "The Congress shall have Power...to regulate Commerce with foreign Nations, and among the several States, and *with the Indian Tribes*." [Emphasis added]

The Trade and Intercourse Acts and Tribal Property Rights. Congress implemented its power by establishing a comprehensive program regulating Indian affairs. The *Indian Trade and Intercourse Act of 1790* (often referred to as the "Nonintercourse Act") articulated Congress' policy to implement treaties and establish the basic features of Federal Indian policy [15] and—

- Brought virtually all interaction between Indians and non-Indians under Federal control.
- Broadly regulated commercial trade with the Indians and established penalties for violations by traders.
- Laid out criminal provisions for murder and other crimes against Indians in Indian Country.

---

[9] Worcester v. Georgia, 31 U.S.(6 Pet.) 515, 551 (1832).
[10] H.R. Exec. Doc. No. 102, 22nd Cong., 1st Sess. 3 (1832).
[11] Quoted in M. Beal, "I Will Fight No More Forever." *Chief Joseph and the Nez Perce War* (1963).
[12] 21 U.S. (8 Wheat.) 543 (1823).
[13] 30 U.S. (5 Pet.) 1 (1831).
[14] 31 U.S. (6 Pet.) 515 (1832).
[15] See F. Prucha. *American Indian Policy in the Formative Years* (1962).

One of the crucial provisions for the act, the basis of eastern land claims, was the requirement that Indian land not be sold by the tribe without Federal approval.[16] In the first case in the Marshall Trilogy, *Johnson* v. *M'Intosh* (1823),[17] the U.S. Supreme Court concluded that the "Discovery Doctrine" gave the U.S. Congress the exclusive right to extinguish the original tribal right of possession without compensation.[18]

The concept of the "Discovery Doctrine" was created by the European countries to benefit their expansionism in the Western Hemisphere.

Treaties With Indian Tribes

Before the Forest Service was created, the U.S. Government, through the President, had negotiated, signed, and ratified 389 treaties with Indian Nations. Sixty treaties contained provisions of reserved rights on what was then public domain land. The purpose of these treaties was to allow western settlement and expansion. The policy was to confine Indian people to land areas to minimize conflict between the two cultures. Some treaties were negotiated to end wars; others to protect the dwindling Indian populations; and some to maintain peace between the two cultures while non-Indian settlement continued. Formal treaties accomplished this until 1871. Early cases clarifying these treaties established the basic elements of Federal Indian law:

1. *The Trust Relationship.* Indian tribes are not foreign nations, but constitute "distinct political" communities "that may, more correctly, perhaps be denominated domestic, dependent nations" whose "relation to the United States resembles that of a ward to his guardian."[19]

2. *Tribal Governmental Status.* Indian tribes are sovereigns. They are governments. State law does not apply to Indian lands without the consent of Congress.[20]

3. *Reserved Rights Doctrine.* The United States did not grant tribal rights, including rights to land and self-government. Tribes *reserved* such rights as part of their status as prior and continuing sovereigns.[21]

4. *Canons of Treaty Construction* (Interpretation of Treaties). Courts have adopted fundamental rules and principles to interpret written documents such as treaties. In legal terminology, these rules and principles are known as "Canons of Construction." Canons that pertain specifically to Indian law have been developed to the benefit of tribes. For example, the canons provide that treaties be construed broadly to determine Indian rights, but construed narrowly when considering the elimination of those rights. Most of the special canons

---

[16] 25 U.S.C. §177. See County of Oneida v. Oneida Indian Nation, 470 U.S. 226 (1985); Clinton and Hotopp. "Judicial Enforcement of the Federal Restraints on Alienation of the Indian Land." 31 *Maine Law Rev.* 17 (1979).
[17] 21 U.S. (8 Wheat.) 543 (1832).
[18] Tee-Hit-Ton Indians v. United States, 348 U.S. 272 (1955).
[19] Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831).
[20] Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).
[21] United States v. Winans, 198 U.S. 371 (1905).

of construction dealing with treaty rights also have been applied to agreements,[22] executive orders,[23] and statutes[24] dealing with Indians.

5. *Congress' Plenary Power* (Elimination of Rights). Congress may eliminate rights established by treaty or other documents.[25]

Most, although not all, of the above principles, first developed in treaty cases, have been extended to situations not involving treaties.[26] For example, Alaska Natives are both similar to and different than American Indians elsewhere. Similar, in that Alaska Natives, the original inhabitants of the region, claim aboriginal rights, a trust relationship, and inherent governmental powers (Case 1984; Price 1982; Smith and Kancewick 1990; Berger 1985).

Primarily, Alaska Natives are different in that, until recently, they experienced very little pressure to surrender their lands and traditional hunting and fishing grounds. A major exception are the Russian settlements in Southeast Alaska and the Aleutian regions before the United States purchased Alaska. Unlike Indian tribes south of the Canadian border, Alaska Natives were not conquered by Euro-Americans, did not sign treaties with the U.S. Government, and were not forced on to reservations.

Removal Era

Beginning in the 1830's, many tribes across the country were forced from their aboriginal lands and removed to the "Indian Territory," most of which is the present-day State of Oklahoma. The "Trail of Tears" was one of these removals.[27] The Federal Government frequently relocated tribes to new lands—sometimes at great distances from their original homelands. *In most cases, where the United States moved several tribes on to a single reservation, despite tribal distinctions, the Federal Government then, and today, regards them as a single confederated tribe.*

Some bands, or portions of tribes, refused to move with the main bodies of their tribes. Congress had the power to designate such remnant groups as "tribes" and deal with them in the normal course of the Federal-Tribal relationship.[28]

The End of Treaty Making

Treaties are legally binding agreements between two or more sovereign governments. Treaties with Indian Nations were negotiated and concluded by a representative of the President and became binding agreements after they were ratified by a two-thirds *majority vote* of the U.S. Senate. Formal treaty making ended when Congress, by *a rider in the Appropriation Act of March 3, 1871* (16 Stat. 544, 25 U.S.C. 71), enacted legislation declaring that *tribes were no longer regarded as independent nations.* This rider

---

[22] See, for example, Antoine v. Washington, 420 U.S. 194 (1975).
[23] See, for example, Arizona v. California, 373 U.S. 546 (1963).
[24] See, for example, United States v. Dion, 106 S. Ct. 2216 (1986); Squire v. Capoeman, 351 U.S. 1 (1956).
[25] Lone Wolf v. Hitchcock, 187 U.S. 553 (1903).
[26] See F. Cohen, *Handbook of Federal Indian Law* 62–70 (1982).
[27] See G. Foreman, *Indian Removal* (1832).
[28] United States v. John, 437 U.S. 634 (1978).

effectively ended the Presidents' treaty-making authority by providing "that hereafter no Indian Nation or tribe...shall be acknowledged or recognized as an independent, nation, tribe, or power with whom the United States may contract by treaty..." All existing treaty rights were protected.[29] The end of treaty making otherwise had little effect; the Government continued to enter into similar legal relationships with tribes under statutes, executive orders, and other agreements such as Presidential proclamations.

The Reservation System (1853)

The reservation system, which began during the "Treaty-making Era," continued to expand as later reservations were added by statute and executive order. Indian law and policy continued to focus primarily on the reservation system. The reservation system was the principal means by which "Indian Country" was established.[30]

Indian Country in Alaska. The U.S. Government purchased Alaska from Russia in 1867. Between 1884 and 1904, beginning with the Organic Act, which created the Forest Service, Congress enacted a number of statutes purported to protect "Indians or other persons" in Alaska "in possession of any lands actually in their use or occupation."

Military officers were the first U.S. Government agents in Alaska. They arrived after the Civil War to control and pacify the Indians on America's last frontier. These first agents enforced Federal customs and Indian liquor laws, preserved order, and protected non-Native traders and settlers (State of Alaska 1986:74ff)

During the period immediately following the purchase of Alaska, the U.S. Government did not give high priority to Alaska Native affairs. While the War Department was officially responsible, missionaries and teachers were the primary non-Indian contacts who carried out the largest share of work with Alaska Natives.

Both the 1884 and 1912 Alaska Organic Acts contained language protecting Native land rights. In 1870, Congress exempted Alaska Natives from a general prohibition on harvesting seals. There were also other exemptions from fish and wildlife [game] laws and international treaties.

In 1904, *United States* v. *Beerigan* held that the United States had both the right and duty to file suit to prevent non-Natives from acquiring land occupied by Natives, implying that non-Natives could not acquire such lands without the consent of the Federal Government. Judge Wickersham held that the authority of the United States to bring the suit in part on the theory that Article III of the 1867 Treaty between Russia and the United States entitled Athabaskan Natives "to the equal protection of the law which the United States affords similar aboriginal tribes within its borders."

Tribal Governments and Their Status in Alaska. The question of whether or not Alaska Natives have tribal governments similar to those identified in the lower 48, has been discussed and debated since the United States purchased Alaska from Russia. Article III of the treaty divided the inhabit-

---

[29] 18 U.S.C. §71.

[30] See generally Antoine v. Washington 420 U.S. 194 (1975)

California Tribes

The Federal Government's relationship with California Indians is unique. It reflects a legally and politically complex history that was shaped by the state's economic and social forces for well over a century.

As early as 1853, the California Superintendent of Indian Affairs acknowledged that California Indian affairs differed from much of the rest of the United States "...where the Indian intercourse laws were enforced by the United States and the Indian territorial possession was protected by the government." Such was not the case with the California Indians.

Contrary to the implied intent of the Treaty of Guadelupe Hidalgo (1848) to preserve and continue civil safeguards established under Spanish and Mexican rule, the State of California denied the Indian population the rights of citizenship and title to property received in Mexican land grants. Native Californian rights of settlement were further and most dramatically affected with the subsequent negotiation of 18 treaties with the Federal Government.

These treaties were negotiated by three agents and approximately 126 tribes, which represented only about 38 percent of the existing tribes. These tribes essentially included the groups that the agents could find most easily. Acting in good faith, the Indian people surrendered their rights in title to their tribal lands for promises the Government made in these treaties.

In 1852, pressures from mineral and agricultural interests, resulted in the California legislature successfully petitioning Congress to not ratify the treaties that would have set aside 8.5 million acres of land for Indian use and occupancy, and would have provided other benefits and services as compensation for loss of traditional tribal territories. However, a few reservations were established through executive order, legislation, and purchases.

Over a thousand California Indians were living on Forest Reserves in 1906, and by 1914, almost half of the California Indian population of 15,000 to 20,000 were referred to as "squatters." The *1910 Forest Allotment Act* (25 U.S.C. 337) authorized the Secretary of the Interior to make discretionary allotments of land to Indians occupying national forests. However, the Secretary of Agriculture determined the suitability of land for that purpose and required that it had to be more valuable for agriculture or grazing than for timber with the result that few allotments were granted.

In 1905, the eighteen unratified treaties came to light, and various Indian and non-Indian organizations began lobbying efforts to redress these wrongs. But because of delays in enabling legislation, it wasn't until 1928 that suit was filed in the Court of Claims. It took 16 years to reach an agreement that resulted in a relatively small cash settlement of a few hundred dollars for each tribal member and little land was received.

ants of Alaska into two broad categories: 1) the "uncivilized" tribes and 2) all other inhabitants. The last sentence of Article III has been held by [the courts] to apply the whole body of Federal Indian and statutory law to the "uncivilized" tribes of Alaska. That sentence states, "The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country."

On October 21, 1993, the Secretary of the Interior first recognized Alaska tribal governments by publishing a list of Federally Recognized Tribal Governments. The 1993 list represents a list of only those villages and regional tribes which the Department of the Interior believes are functional as political entities, exercising governmental authority. The listed entities are therefore acknowledged to have the "immunities and privileges available to other Federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such tribes" 25 CFR 83.2 (1994 ed) (Printed in the *Federal Register*, Vol. 60, No. 32, Thursday, February 16, 1995). An updated version of that list may be found in Appendix C.

The Era of Allotment and Assimilation (1871–1928)

As long as Indians live in villages they will retain many of their old and injurious habits... I trust that before another year is ended they will generally be located upon individual lands of farms. From that date will begin their real and permanent progress.

—BIA Agent for the Yankton Sioux Tribe (1877)[31]

The General Allotment Act is a mighty pulverizing engine to break up the Tribal mass. It acts directly upon the family and the individual.

—President Theodore Roosevelt (1901)[32]

Indian Allotments. Originally, Indian lands were communally owned by tribes. In 1887, Congress passed the *Dawes, or General Allotment, Act*, one of the most significant Federal statutes in the field of Indian law.[33] It delegated the Bureau of Indian Affairs (BIA) authority to allot parcels of tribal land to individual tribal members. Generally, each family head was allotted 160 acres with each single person over 18 years of age receiving 80 acres. Each individual allotment would remain in trust (exempt from State taxes and other State laws) for 25 years—a period that could be shortened or extended. Many of these lands remain exempt from State taxes today.

The Federal Government deemed large amounts of unallotted tribal land to be surplus to the needs of the Indian tribal reservation population and opened them to non-Indians for sale or homesteading. Some tribes received compensation for the sale of these lands; some did not. Indian landholdings decreased from 138 million acres in 1887 to 48 million acres in 1934—a

---

[31] Quoted in D.S. Otis. *The Dawes Act and the Allotment of Indian Lands*. (F. Prucha, ed., 1973).
[32] Quoted in S.L. Tyler. *A History of Indian Policy* 104 (1973).
[33] See generally D.S. Otis. *The Dawes Act and the Allotment of Indian Lands*. (F. Prucha, ed., 1973).

total loss of 90 million acres. The combination of allotments and homesteads caused serious jurisdiction and management problems.

Assimilation. The allotment policy was one of several policies intended to assimilate Indians into the larger society. There were also other policies.

- Indians were required to abandon their language, native dress, spiritual and cultural practices, and other traditional customs at BIA boarding schools.
- Various Christian denominations, with the concurrence of Congress, established missions on reservations and were given land to build their churches.
- Tribes' exercise of their tribal governmental authority was discouraged and a local BIA superintendent could, in effect, govern many reservations.
- Tribal sovereignty was further eroded with the *Major Crimes Act of 1885*, by which Congress authorized the Federal Government to transfer jurisdiction for dealing with certain criminal acts away from the tribes and to the Federal Courts, further reducing tribal government and encouraging assimilation into the larger society.[34]

The Indian Citizenship Act of 1924. The Indian Citizenship Act of 1924 was enacted to provide U.S. citizenship to Indians. Indians had previously not been U.S. citizens because they remained members of sovereign nations.[35]

Indian Reorganization (1928–1945)

John Collier was vindictive and overbearing. He tolerated no dissent, either from his staff or from the Tribes.... Who can say but that we will succeed in vanquishing the pernicious effects of the Indian Reorganization Act, finally exposing its leader for what he really was, and institute our own independent governments in all the Tribes, respected and admired by all.

—Rupert Costo (1983)[36]

Collier's achievement as commissioner was not only to end the forced "atomization" of Indian life, to humanize the Indian administration, and to involve other agencies in the search for remedies to the problems of Indian poverty, ignorance, and despair, but above all to resurrect the "bilateral, contractual relationship between the government and the Tribes (the historical, legal, and moral foundation of Government-Indian relations)."

—Wilcomb E. Washburn (1975)[37]

---

[34] 18 U.S.C. §1153.
[35] 18 U.S.C. §1401(b).
[36] "The Indian New Deal, 1928–1945" in *Indian Self-Rule* 14 (Institute of the American West, 1983).
[37] *The Indian in America* 254 (1975).

The Meriam Report. The Meriam Report of 1928 set the tone for a reform movement in Indian affairs. This influential study, prepared by the Brookings Institution, publicized the deplorable living conditions on Indian reservations and—

- Recommended an increase in health and education funding.
- Recommended an end to the allotment policy.
- Encouraged tribal self-government.[38]

The Indian Reorganization Act of 1934. The Indian Reorganization Act of 1934 (IRA)[39] translated some of the Meriam Report's recommendations into legislation. Its primary thrust was to establish governments with whom Congress and the Department of the Interior could conduct governmental business. Its main points were—

- Repealing the Dawes Act.
- Providing that no new allotments be made.
- Extending the trust period for existing allotments.
- Encouraging tribes to adopt constitutions[40] and to form Federally chartered corporations.[41]
- Instituting Indian hiring preference in the BIA.
- Establishing a revolving loan fund for tribal development.
- Expressly allowing the Secretary of the Interior to accept additional tribal lands in trust.
- Including other provisions directed toward improving the lot of Indians.[42]

Tribes were given 2 years to accept or reject the Indian Reorganization Act. One hundred eighty-one tribes accepted it; 77 rejected it. Many tribes viewed the Indian Reorganization Act's procedures for establishing tribal governments as a continuation of the Federal Government's role in tribal affairs.[43]

Tribal Self-Government. The Indian Reorganization Act's (IRA's) most significant contribution was to promote tribal self-government. It encouraged the tribes to adopt a form of government. Tribes have the inherent right to operate under their own governmental systems. Many have adopted constitutions, while others operate under Articles of Association or other bodies of law, and some still have traditional systems of government. The chief executive of a tribe is generally called a tribal chairperson, but may also be called principal chief, governor, or president. The chief executive

---

[38] See generally Institute for Government Research. *The Problem of Indian Administration* (L. Meriam ed., 1928) (commonly referred to as the Meriam Report).
[39] 25 U.S.C. §461–479.
[40] 25 U.S.C. §476 (Section 16).
[41] 25 U.S.C. §477 (Section 17).
[42] See Generally Comment. "Tribal Self-Government and the Indian Reorganization Act of 1934," *Mich. L. Rev.* 955 (1972). On John Collier, the primary mover behind the IRA, see K.R. Phillip, *John Collier's Crusade for Indian Reform* (1977).
[43] See S.L. Tyler. *A History of Indian Policy* 95–124 (1973).

usually presides over what is typically the tribal council. The tribal council performs the legislative function for the tribe, although some tribes require a referendum of the membership to enact laws.

The Termination Era (1945–1961)

Following in the footsteps of the Emancipation Proclamation of 94 years ago, I see the following words emblazoned in the letters of fire above the heads of the Indians— "These people shall be free."

—Sen. Arthur V. Watkins (1953)[44]

Termination represented a...revolutionary forced change in the traditional Menominee way of life... Congress expected immediate Menominee assimilation of non-Indian culture, values, and life styles. The truth is that we Menominees have never wanted such changes imposed upon us, any more than white people would want an Indian way of life imposed upon them... The immediate effect of termination of our Tribe was the loss of most of our 100-year-old treaty rights, protections, and services.... We want Federal protection, not Federal destruction. The Menominee Restoration Act will be the dawn of a new partnership with the Government—self-determination without termination.

—Ada Deer (1973)[45]
Appointed Assistant Secretary of Indian Affairs USDI in 1992

The Indian Claims Commission Act of 1946. The Indian Claims Commission allowed tribes to sue the Federal Government for past actions considered detrimental to their welfare.

In 1946, Congress created the Indian Claims Commission to provide Indian tribes an opportunity to obtain payment for the loss of tribal lands.[46] This special court was authorized to hear and decide causes of action originating prior to 1946. Tribes were given 5 years, or until 1951, to file their claims; no statutes of limitation were applied, and certain claims not previously recognized were allowed.

Although the claims process resulted in substantial recoveries for some tribes, its restrictions have been criticized in several respects.[47]

- The United States was allowed so-called "gratuitous offsets" against claims awarded to tribes, in the amount of past services provided to tribes.
- No interest was allowed on claims based on takings of aboriginal title or executive order lands.
- Although the tribes were permitted to select their own counsel for these claims, such counsel had to be approved by the Secretary of the Interior (because U.S. funds were expended to hire the attorneys).

---

[44] Quoted in D. Getches and C. Wilkinson. *Cases and Materials on Federal Indian Law.* 130 (1986).
[45] Hearings on H.R. 7421, Before the Subcommittee on Indian Affairs, 93d Cong., 1st Sess. 32–36 (1973).
[46] 25 U.S.C. §70–70v.
[47] See Danforth, "Repaying Historical Debts: The Indian Claims Commission," 49 *NDL Rev.* 359 (1973)

Claims were then usually divided into three separate and time-consuming stages:

- Determination of title ownership.
- Valuation of the United States' liability.
- Determination and deduction of offsets to the United States' liability.

The Indian Claims Commission Act could not provide for the recovery of land. If a claim was successful, only monetary payments were available, and they were distributed to individual tribal members rather than to the tribes themselves.

The 1946 act applied only to claims against the U.S. Government and did not cover claims against states, counties, or private entities.

In 1978, cases not completed by the Indian Claims Commission were transferred to the U.S. Court of Claims (which in 1983 became the Claims Court). As of 1996, 617 dockets had been filed, and several still remain unresolved.

The Termination Acts. *House Concurrent Resolution 108 (HCR 108),* adopted in 1953, expressed the Federal policy on the Government's special relationship with Indian tribes. HCR 108 called for ending such relationships as rapidly as possible. In line with that policy, the following groups were terminated from their Federal relationship:

- Alabama and Coushatta Tribes of Texas*
- Catawba Indian Tribe of South Carolina*
- Klamath, Modoc, and Yahooskin Band of Snake Indians of Oregon*
- Ponca Tribe of Nebraska*
- Mixed Blood Ute Indians of Uintah and Ouray of Utah
- 40 California Indian Rancherias (32 have been restored)
- Western Oregon Indians, including Confederated Tribes of Siletz Indians*
- Confederated Tribes of the Grand Ronde Community,* and Cow Creek Band of Umpqua,* Confederated Coos, Lower Umpqua, and Siuslaw Indians
- Menominee Tribe of Wisconsin*
- Ottawa Tribe of Oklahoma*
- Peoria Tribe of Oklahoma*
- Wyandotte Tribe of Oklahoma*
- Paiute Indian Tribe of Utah*

These groups were singled out for what has become known as the termination experiment. Termination fundamentally altered the special Federal-Tribal relationship by making the following changes:

- Tribal landownership was fundamentally altered by selling Indian land to third parties (with compensation to tribal members), transferring

land to private trust, or transferring land to new tribal corporations under State law.[48]

- All special Federal programs to tribes were discontinued.
- Generally, all special Federal programs (for example, health and education services) to *individual Indians* were discontinued.[49]
- Exemptions from State taxing authority were ended.
- Tribal sovereignty, as a practical matter, was ended.

Congress has never abandoned HCR 108's termination policy expressly, but termination has been repudiated implicitly by the more recent self-determination policy. Congress has restored the tribes marked above with asterisks to Federal status.[50] *In addition, by action of the courts, as of 1987, 32 of the 40 California rancherias mentioned above were no longer considered to be terminated.* Many tribes have been restored with treaty rights intact; however, the land base that existed at the time of termination has not been restored.

Public Law 280. Even though their tribes were not actually terminated, many tribes saw their sovereignty greatly diminished during the "Termination Era." The most important piece of legislation in this regard was Public Law 280, passed in 1953, which was the first general Federal legislation extending State jurisdiction to Indian Country. The original five "280" States with criminal and civil jurisdictions in Indian Country were California, Minnesota, Nebraska, Oregon, and Wisconsin. Congress added Alaska later. Other 280 "option states" had full or limited criminal or civil jurisdiction over various matters in Indian Country, such as certain domestic matters, child abuse and neglect, and other areas that the tribes consented to: Arizona (for air and water control laws only); Florida (for criminal and civil jurisdiction); Idaho, Iowa, Montana, Nevada, and Utah (for criminal and civil jurisdiction and child abuse and neglect and certain domestic matters); Washington (jurisdiction limited to certain matters); North Dakota (civil jurisdiction over tribes who consent, but no tribe has yet consented to any jurisdiction); South Dakota (limited jurisdiction in civil matters); New York and Kansas (limited jurisdiction). Public Law 280 also provided State jurisdiction on other reservations in states that took the steps necessary to assume jurisdiction under the act.[51]

Other Policies of the Termination Era. Other policies instituted or expanded in the late 1940's and early 1950's included the transfer of many educational responsibilities to the states and the "relocation" program to encourage Indian people to leave American Indian reservations and Alaska Native communities and seek employment in various metropolitan areas.

---

[48] See generally Wilkinson and Biggs, "The Evolution of the Termination Policy," 5 *Am. Ind. L. Rev.* 139 (1977).
[49] See, for example, Menominee Tribe of Indians v. United States, 391 U.S. 404 (1968).
[50] See, for example, the Menominee Restoration Act of 1973, 25 U.S.C. §903–903f.
[51] See Goldberg, "Public Law 280, The limits of State Jurisdiction over Reservation Indians," 22 *UCLA L. Rev.* 535 (1975).

The "Self-Determination" Era (1961–Present)

The dismal failure of the "Termination Era" combined with poor living conditions on reservations led to the reforms of the 1960's, 1970's, and 1980's, in much the same way that the Indian Reorganization Act was a reaction to the negative impact of the "Allotment Era." The "Self-Determination Era" has been characterized by expanded recognition and application of the powers of tribal self-government, and by the general exclusion of State authority from reservations. Progress has not been uniform—Indians have suffered their share of reversals—but on balance it can be said that Indian tribes and their members have benefited from more favorable legislation and judicial decisions during the 1970's and 1980's than in any other period in this country's history.

Congressional Action

Indian Civil Rights Act of 1968 (ICRA). A major event between the "Termination" and "Self-Determination" eras was the ICRA.[52] The act extended most of the protections of the Bill of Rights to individual tribal members. This action was taken because the civil rights protection of the U.S. Constitution itself did not apply to Indian tribes. A copy of the text of ICRA can be found in Appendix A.

The ICRA also allowed states that had assumed Public Land 280 jurisdiction to transfer jurisdiction back to the tribes and the Federal Government.

Alaska Native Claims Settlement Act (ANCSA). In 1971, Congress passed ANCSA.[53] Land claims of Alaska Natives—based on aboriginal title to much of the state—had never been resolved. ANCSA extinguished aboriginal claims and transferred 44 million acres to new Alaska Native-owned and controlled State-chartered corporations. ANCSA also provided for a total cash payment of approximately $1 billion dollars to Alaska Natives.[54] As of this writing, not all State claims have been settled.

American Indian Policy Review Commission Report. Public Law 93–580, enacted on January 2, 1975, provided for the establishment of the American Indian Review Commission which Congress charged with conducting a comprehensive review of the policies, laws, and programs affecting the conduct of Indian affairs. The 11-person commission (six Congressmen and five Indian members) formally submitted its report in May 1977. The core of the commission's report recommended strengthening tribal governments, affirming the trust relationship between tribes and the Federal Government, and reorganizing the BIA.

Indian Self-Determination and Education Assistance Act of 1975 (638). Through grants and contracts, the *Indian Self-Determination and Education Assistance Act of 1975* encouraged tribes to assume responsibility for Feder-

---

[52] 25 U.S.C. §1301–1303 (also codified in scattered sections of 18 U.S.C. and 28 U.S.C.).
[53] 43 U.S.C. §1601–1628.
[54] See generally Lazarus and West. "The Alaska Native Claims Settlement Act: A Flawed Victory." 40 *Law and Contemp. Prob.* 132 (1976).

ally funded programs designed for their benefit that had previously been administered by the BIA and IHS.[55]

Indian Health Care Improvement Act of 1976.[56] This act consolidated Indian Health Service (IHS) programs, authorized funding that would improve IHS programs, and created programs to educate health professionals for work in Indian Country.

The Indian Child Welfare Act of 1978[57] addressed the long-standing problem of large numbers of Indian children being transferred from their natural parents to non-Indian parents in State adoption and guardianship proceedings. In general, the Act requires that many adoption and guardianship cases take place in tribal court; and establishes a strict set of statutory preferences for Indian guardians over non-Indian guardians for those cases that are heard in State court.

American Indian Religious Freedom Act of 1978 (AIRFA), a joint resolution signed into law by President Carter, explicitly recognizes the importance of traditional Indian spiritual practices and directs all Federal agencies to insure that their policies do not abridge the free exercise of Indian religion.[58]

Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (P.L. 101–601), addresses the rights of lineal descendants and members of Indian tribes, Alaska Native, and Native Hawaiian organizations to certain human remains and to certain precisely defined cultural items. NAGPRA requires Federal agencies to prepare inventories of remains in their possession and to consult with affiliated American Indian tribal groups about their repatriation. It establishes a process for the return of institutionally held skeletal remains, grave items, and other objects sacred to groups of their cultural affiliation.

The Religious Freedom Restoration Act of 1993 (P.L. 103–141) mandates that the "government should not substantially burden the free exercise of religion without compelling justification." The act further provides a claim or defense to persons whose religious exercise is substantially burdened by government.

During the past 20 years, Congress has greatly increased appropriations for Indian affairs. After a decrease in fiscal year 1996, such appropriations appear to be increasing again.

Executive Action. Administrative policy towards American Indians and Alaska Natives began to shift in the mid-1960's. In 1966, Interior Secretary Stewart Udall told BIA administrators and congressional aides at a Santa Fe, New Mexico meeting, that self-determination for Indians would be the

---

[55] See, for example, Rosenfelt. "Toward a More Coherent Policy for Funding Indian Education," 40 *Law and Contemp. Prob.* 190 (1976).
[56] Pub. L. No. 94–437, 90 Stat. 1400 (codified at 25 U.S.C. §1601–1603, 1611–1615, 1621, 1631–1633, 11651–1658, 1661, 1671–1675, 42 U.S.C. §139f, 1395n, 1395qq, 1396j).
[57] 25 U.S.C. §1901–1963.
[58] See 42 U.S.C. §1996.

theme of the remainder of his administration. Self-determination was also addressed by President Johnson's congressional message in 1968 and in President Nixon's message to Congress in 1970.

> *It is long past time that the Indian policies of the Federal Government began to recognize and build upon the capacities and insights of the Indian People. Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.*
>
> —Message to Congress from Richard M. Nixon,
> July 8, 1970

Executive direction resulted in a new or modern Indian Policy, *Public Law 93–638*, which granted the BIA authority to continue Indian preference for filling vacancies. The *Indian Self-Determination Act* helped tribes become more involved in Federal decisionmaking processes on actions that could potentially affect their general memberships or natural resources. Indian preference has resulted in a steadily growing number of Indian BIA employees. Many BIA leadership positions are now held by Indians, and the Bureau is increasingly supporting self-determination for Indian tribes and individuals.

In 1977, the Department of the Interior established a new position—the Assistant Secretary for Indian Affairs. In the 1980's, the Reagan Administration repeatedly expressed its support for tribal self-determination and government-to-government relationships[59] and promoted economic development projects. President Bush reaffirmed the government-to-government policy as did President Clinton in his meeting with tribal leaders at the White House on April 29, 1994.

Judicial Action. During the 1970's, the Supreme Court heard some 33 Indian law cases—more than those in the fields of antitrust or consumer law. This trend has continued.

Tribal Action. Since the 1970's, Indian tribes have chosen to exercise their powers of self-determination, sovereignty, and self-government by—

- Restructuring the BIA organization.
- Contracting programs performed for the benefit of individual tribe(s) from BIA and IHS.
- Accepting self-governance grants from the Secretary of the Interior which enable tribe(s) to assume all the programs and activities conducted for their benefit, enabling tribe(s) to set priorities and budgets for tribal governance, programs, and activities.

---

[59] President Reagan's Statement on American Indian Policy, 19 *Weekly Comp. Doc.* 98–102 (Jan. 24, 1983).

- Establishing tribal courts.
- Preserving culture and language.
- Some assuming the role of state Historic Preservation Officers (SHPO).
- Some working directly with the Environmental Protection Agency (EPA) and assuming programs formerly guided by the states.
- Establishing tribal ordinances for zoning, employment, contracting, air, water, natural resources, hunting, fishing, and taxation.
- Establishing tribal and individual tribal member enterprises on Indian lands, communities, or reservations.
- Developing and maintaining active relations with Congress and the Administration.
- Seeking opportunities or developing initiatives with the Departments of Agriculture, Commerce, Education, Energy, Defense, Labor, and the Environmental Protection Agency.
- Collaborating with other tribes to seek social, economic, and educational opportunities; economic development and gaming; and protection of sovereignty, sacred sites, spirituality, and cultural practices.
- Seeking technical assistance from Federal agencies as may be needed for self-determination initiatives.
- Seeking skills for interim tribal employment or until tribal members may assume this technical assistance.

Section 1: The Governmental Relationship

Maintain a governmental relationship with Federally Recognized tribal governments (American Indian/Alaska Native Policy (FSM 1563)).

- Take the time to meet with tribal governments on a regular basis.
- Build and enhance a mutual partnership.
- Gain an understanding of each other to develop an effective governmental relationship.
- Pursue cooperative and partnership initiatives and efforts.

This section includes information about—

- The Doctrine of Tribal Sovereignty
- Fundamental Powers of Indian Tribes
- Government-to-Government Relations
  - Consultation
  - Communications
- Status of Federally Recognized Indian Tribes
- Consultation With Other Groups and Indian Individuals

Indian tribes are part of the constitutional structure of government. Tribal authority was not created by the Constitution—Tribal sovereignty predated the formation of the United States and continued after it—but tribes were acknowledged by the Constitution in the reaffirmation of previously negotiated treaties (most of which were with Indian Tribes), the two references to "Indians not taxed," and the Indian Commerce Clause. Relations were then cemented through the treaties and treaty substitutes.

The modern presidency, Congress and Supreme Court continue squarely to acknowledge this third source of sovereignty in the United States ...

—Charles F. Wilkinson (1987)[60]

Article 1, Section 8, Clause 3 of the U.S. Constitution empowers Congress "(t)o regulate commerce ... with the Indian tribes," which basically means that "Indian relations are ... the exclusive province of Federal law." (*County of Oneida* v. *Oneida Indian Nation*, 470 U.S. 226, 234 (1989), making the unique status of Indian tribes and the special relationship with the Federal Government (a government-to-government relationship) clear.

[60] *American Indians, Time, and the Law* 103–04 (1987).

Worcester v. *Georgia* 31 U.S. (6 Pet) 515 (1832) reinforced three bedrock principles relating to Indian tribes:

- Indian tribes, because of their aboriginal and territorial status, possessed certain incidents of preexisting sovereignty.
- The United States could reduce or eliminate such sovereignty, but individual States could not.
- The tribes' limited inherent (preexisting) sovereignty (Fletcher, 10 U.S. (6 Cranch) at 147) and their corresponding dependency on the United States for protection imposed a trust responsibility on the United States.

These principles shape American Indian law:

- Sovereignty
- The Federal-to-Tribe (government-to-government) relationship
- The "Trust Responsibility" of the U.S. Government to Indian tribes

The Doctrine of Tribal Sovereignty

Indian tribes are not foreign nations, but distinct political entities, governing themselves, and making treaties with the United States (Cherokee Nation v. Georgia (1831)). Their relationship to the United States Government is that of domestic, dependent nations—the relationship is similar to that between wards and their guardians.

Indian Nations had always been considered distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil ... The very term "nation" so generally applied to them means "people distinct from others."

—John Marshall, 1832
Worcester v. Georgia
31US(6 Pet.)515, 561

Indian tribes recognized by the U.S. Government have a special and unique legal and political relationship with the Government, defined by history, treaties, statutes, court decisions, and the U.S. Constitution. Although *the U.S. Constitution does not apply to tribes*, Article 1, Section 8, Clause 3 authorizes Congress to regulate "... commerce ... with Indian tribes."

The important point of sovereignty is that *tribes are independent nations.* Some characteristics of sovereignty are:

- Tribes were not granted sovereignty, they have always possessed it.
- Indian tribal governments have always maintained sole responsibility to perpetuate their status as sovereign nations and to exercise their rights as defined by treaty or other statute.
- Depending upon the legal document establishing a tribe's status and recognition, there may be certain rights that only Congress can alter.
- Sovereignty is a status rigorously guarded and maintained by tribal governing bodies, Indian Nations to not delegate sovereignty to other entities.

The Supreme Court has found—

- That tribal governments are "unique aggregations possessing attributes of sovereignty over both their members and their territory."[61]
- That tribal powers not limited by Federal statute, by treaty, by restraints implicit in the protectorate relationship, or by inconsistency with their status remain with tribal governments or reservation communities.[62]

Fundamental Powers of Indian Tribes

Attributes of Sovereignty. Most tribal governments possess and exercise inherent self-government powers unless such powers have been extinguished. Tribal governments frequently have considerable powers that are separate and equal to those of State and local governments, particularly civil and criminal jurisdiction over individuals and corporations. The following are fundamental categories of tribal government power that have been recognized under Federal law. These are also the attributes of sovereignty:

Attributes of Sovereignty

- The power to establish a form of government.
- The power to determine membership.
- The power to legislate or otherwise adopt substantive civil and criminal laws.
- The power to administer justice.
- The power to exclude persons from the territory or reservation.
- The power to charter business organizations.
- The power of sovereign immunity.

Powers of Alaska Native Tribes and Groups. Absence of treaties between the United States and Alaska Natives precluded the development of the "dependent sovereignty" status. The inherent governmental powers that treaty making addressed with the Indian Nations in the "lower 48" are not found in the developing relations with Alaska Natives and their respective tribal governments, societies, or clans. This lack of recognition has contributed to Alaska Natives' continued difficulties in exercising tribal powers with both the State and Federal governments and undermined rather than supported Alaska Native tribal powers.

When the *Indian Reorganization Act of 1934* was originally passed, it did not fully take into account the unique needs of Alaska Natives. In 1936, it was amended to do so. Thus, the Federal Government acknowledged a relatively limited and fragmented landownership-related trust responsibility toward Alaska Natives. One benefit resulting from the act took place in the following year, 1937, when Congress made reindeer herding an exclusively Native

---

[61] *United States* v. *Wheeler*, 435 U.S. 313 (1978).
[62] F. Cohen. *Handbook of Federal Indian Law* 232–35 (1982).

activity. Through such activities, Congress was treating Alaska Natives in much the same way as they did Indian tribes elsewhere.

Eventually, executive orders created more than 150 special Native reserves to support reindeer herding, schools, and vocational education. Some reserves were also created to protect extensive areas for subsistence activities. Only one Indian reservation was ever established in Alaska at Metlakatla. It was created under unique circumstances by an Act of Congress in 1891 (Price 1990:78–83). At that time, Alaska was still a territory. Creation of these reserves provoked fierce battles between territorial leaders and the Secretary of the Interior over who would control Alaska lands and resources. The territorial leaders viewed the reserves as barriers to Alaska's development and the progress of its people—a view reinforced by the Federal Government's termination policy in the early 1950's.

Government-to-Government Relations: Consultation

National Forest System lands are public lands. While most Indian title to these lands has been extinguished, the Forest Service has to be concerned where there are—

- Tribal rights reserved by treaty.
- Spiritual and cultural values and practices and archeological and heritage resources.
- Adjacent tribal or trust lands.
- Tribal water rights.

Tribes are sovereign nations and other governments. *They are not publics.* Consultation with tribes will be discussed throughout this document. Consultation with tribal governments must be established and maintained for a lasting government-to-government relationship.

Whom to Consult

Government-to-government consultation may only take place between the Federal Government and Federally Recognized Indian Tribes.

Many tribes have at least two forms of leadership—the elected body and the traditional/spiritual leaders. *Consultation with tribal governments occurs through the elected tribal officials*—presidents or chairpersons of tribal executive or business councils, headmen or women, and governors in some Southwest tribes. Federal heritage laws may include consultation with traditional cultural or spiritual leaders as well as elected tribal government leaders.

- *The Forest Service contact for government-to-government consultation is the line officer at the Forest Service level where a decision that may affect a tribe will be made.*
- *The line officer initiates and develops the government-to-government consultation.*
- *The Forest Service line officer in this government-to-government consultation is acting as a representative of the President of the United States.*

Conducting Consultation

Consider the following in conducting government-to-government consultation with Indian tribes:

- Conduct consultation with official tribal leadership.
- Visit, listen, and communicate in person.
- Respect tribes as sovereign governments.
- Seek an understanding of how the tribe wishes to be consulted.
- Identify preferred methods of communication, develop protocols or a Memorandum of Agreement on how consultation should be conducted.
- Develop points of contact for tasks (such as staff work). Determine with whom staff work should be conducted.
- Be sensitive to the effects of history on the consultation relationship. There may be a lack of trust.
- If consultation is likely to occur repeatedly, or with a number of different tribes, with the tribe's agreement, consider establishing a consultation working group.
- Be flexible—especially with deadlines. If particular deadlines must be set, be sure to explain them and why they exist. Expect to negotiate.
- Conduct field trips. Understanding is generally shared on field visits.
- Questions may not be answered immediately. It may be necessary to pose a question and allow tribal leaders to think about the question and discuss it with tribal committees, members, or tribal councils.
- Be clear about whether you are notifying the tribe of an action or consulting with them and seeking agreement. For actions on National Forest System lands, some statutes such as the Archaeological Resources Protection Act (ARPA) require notification, but not necessarily consent, although consent/agreement is certainly the desired outcome.
- Respect confidentiality.

Specific steps of consultation can be developed with specific tribes. This information can be formalized in an agreement or in a regional tribal resource book.

Laws That Require Consultation

Several authorities may require consultation with tribes:

- *The National Environmental Policy Act (NEPA).* Regulations implementing NEPA at 40 CFR 1507.7, require Federal agencies to invite Indian tribes to participate in the scoping process on projects or activities that affect them.

Tribes with treaty rights upon National Forest Service lands may also meet with line officers in advance of the formal planning processes about their reserved rights.

- *Federal Land Policy and Management Act of 1976* (90 Stat 2743; 43 U.S.C. 1712, Sec 202 (b). This act directs the Secretary of Agriculture to coordinate National Forest System land use planning with Indian tribal land use planning (Table 1.1.) (page 39).
- *The National Forest Management Act (NFMA) and Forest and Rangeland Renewable Resources Act (RPA)* for forest planning.
- *Historic Preservation laws.*
- *Executive orders* such as the one on Indian Sacred Sites. (See Appendix A.)

See also Table 1.1 (page 39).

Communication

It is important to distinguish between government-to-government consultation and the communications, coordination, and public involvement efforts commonly carried out between tribal government *staff members* and equivalent Forest Service staff and employees. Many tribes have technical staff, legal counsel, advisors, and administrators employed to help run tribal affairs. These staff people usually do not speak on behalf of the tribe about tribal policies or other tribal governmental actions. However, they can be invaluable professional contacts for Forest Service staffs. Staff-to-staff work can continue or even precede government-to-government consultations.

Intertribal Groups and Organizations. There may be groups, such as the Intertribal Timber Council, the Native American Fish and Wildlife Society, and others that provide information, advice, and technical assistance to the tribes on resource matters, but these groups do not speak for or represent the tribes. Contact with such groups does not substitute for the Forest Service conducting government-to-government consultation with elected tribal officials.

Status of Federally Recognized Indian Tribes

The Forest Service conducts government-to-government consultation only with Federally Recognized Tribes.

Federally Recognized Indian Tribes. Federal recognition is the acknowledgment of an Indian tribe by the Secretary of the Interior as a tribal government with a special relationship with the U.S. Government. This unique and special relationship recognizes that Indian tribes receive some benefits and reserve some rights not available to other citizens. The process, regulations, and criteria for attaining Federal recognition are found in 25 CFR 83.

Treaty Indian Tribes. Until 1871, Congress developed, negotiated, and ratified formal treaties with individual tribes or confederated tribes. Early cases clarifying these treaties established the basic elements of Federal Indian law. *Treaty Indian tribes are governments that have retained rights on Federal or other lands* that may include hunting; fishing; gathering food and

Table 1.1.—Tribal Coordination and Consultation Requirements

Law	Whom To Contact	Subject	Time Frame
AIRFA—American Indian Religious Freedom Act	Traditional Religious Practitioners	Obtain and consider views during decisionmaking.	Not specific.
ARPA—Archaeological Resources Protection Act	Tribal Officials	If permitted work may harm or impact an "Indian religious or cultural site on public lands."	FS must notify the tribe 30 days before issuing a permit.
NFMA—National Forest Management Act	Tribal Officials	Provide opportunity to raise issues and comment on land-use plans, and ensure consistency between FS and the tribe's land use plans.	Vary depending upon the stage of the planning process. 30 days or more.
NAGPRA—Native American Graves Protection and Repatriation Act	Tribal Officials, Lineal Descendants, and Culturally Affiliated Groups	Treatment and disposition of human remains and associated funerary items and items of cultural patrimony. Also, when human remains or associated funerary items are accidently discovered.	Not specific, but because of ref. to ARPA, 30 days before excavation. FS must notify the tribe within 3 working days and mitigation must be completed within 30 days of discovery.
NEPA—National Environmental Policy Act	Tribal Officials	Provide opportunity to participate in land management decision-making.	Scoping process, comment period, 30 days on EA; 45 days on EIS.
NHPA—National Historic Preservation Act	Tribal Officials, Traditional Cultural Leaders	Provide opportunity to consult as "interested persons" if action may affect properties of historic value to an Indian tribe on non-Indian lands. Invite to participate as concurring parties when they request it.	Not specific, but incorporate in NEPA. Not specific.
RFRA—Religious Freedom Restoration Act	Religious Practitioners	Ensure agency decisions do not burden free exercise of religion (access, use, or ritual practice)	Not specific.
EO Government-to-Government Relations	Tribal Governments	Consult to greatest extent and operate within a government-to-government relationship.	Not specific.
EO Sacred Sites	Tribal Officials and Religious Leaders	Accommodate access to and ceremonial use of sacred sites and avoid physically affecting the integrity of such sites.	Not specific but incorporate into NEPA/NFMA.

cultural and medicinal plants; and grazing livestock on open and unclaimed lands.

Executive Order Tribes. Not all reservations were established by treaty. Some reservations were identified or created by executive order. Between 1871, when Congress discontinued formal treaty making, and 1910, tribes not previously recognized were surfaced by executive order.

As a rule, executive order tribes rarely reserved off-reservation rights or privileges. *Therefore, the Forest Service may have different land management responsibilities for areas adjacent to or neighboring executive order tribes than they do with treaty tribes. The Forest Service must consult with both.*

Alaska Native Corporations (Alaska Native Claims Settlement Act of 1971—ANCSA Corporations). Congress passed ANCSA in an attempt to accomplish a fair and just settlement of all aboriginal land claims by Alaska Natives and Alaska Native groups. Native corporations under ANCSA do not take the place of tribal governments in Alaska, where there are 226 Federally Recognized Tribes. These tribes have traditional governments formed under the Indian Reorganization Act of 1934 (amended in 1936 to include Alaska Natives) and have a unique relationship with the Federal Government. The Forest Service works on a government-to-government basis with these Federally Recognized Tribes—not the Native Corporations.

Non-Federally-Recognized Indian Groups. There are a number of Indian communities and groups who identify themselves as tribes, but are not Federally acknowledged. *The Forest Service has neither the authority nor the obligation to work with these groups on a government-to-government basis,* although the Forest Service may work with them as other interested publics.

Consultation With Other Groups and Individuals

Although the Forest Service may work with American Indian or Alaska Native *individuals,* groups, organizations, and communities in compliance with NEPA, NFMA, and other related laws, *this is not recognized as government-to-government consultation.*

However, types of consultation other than government-to-government consultation, with traditional practitioners, communities, and other interested parties may be conducted to comply with NEPA, NFMA, the American Indian Religious Freedom Act (AIRFA), and the Native American Graves Protection and Repatriation Act (NAGPRA) (the latter for lineal descendants).

- *The National Historic Preservation Act (NHPA)* requires consultation with traditional practitioners and communities and other interested parties.
- *AIRFA* encourages Federal agencies to consider traditional practices, which often have spiritual associations and connotations, and recommends that the Forest Service also contact nonrecognized groups about cultural sites and archeological sites and resources.

There may be non-Indian groups or organizations claiming to represent tribal views and positions. In these instances, Forest Service staff should consult with Indian tribes and groups to verify this representation.

Section 2: Treaty Rights and Forest Service Responsibilities

Implement Forest Service programs and activities honoring Indian treaty rights and fulfill legally mandated trust responsibilities to the extent that they are determined applicable to National Forest System lands (American Indian/Alaska Native Policy (FSM 1563)).

- Visit our tribal neighbors. Learn about their treaties and rights.
- Talk with them about areas of mutual interest.
- [Endeavor to] reconcile Indian needs and claims with the principles of good management, multiple use, and national forest laws and policies.
- Attempt reasonable accommodation without compromising the legal positions of either the Indians or the Federal Government.
- Work together to develop ways to accomplish the goals of this policy.

This section includes information about—

- Treaties
- Treaty Rights on National Forest System Lands
- Characteristics of Treaty Rights
  - Grazing Rights
  - Hunting and Fishing Rights
  - Gathering Rights and Interests
  - Water Rights
  - Alaska Native Subsistence Rights
- Trust Responsibilities
- National Environmental Policy Act (NEPA) Consultation
- Cooperation in Management

The United States obtained the vast majority of public domain land in the lower 48 States by signing treaties with Indian tribes. Approximately 60 of these tribes have treaties that contain some rights to off-reservation lands and resources. Other laws define Alaska Natives' rights to subsist from the natural resources of the land (described in this section under Alaska Native Subsistence Rights). *Treaties are Federal law.*

The Federal/Tribal relationship is one often described as a guardian/ward relationship. Under differing laws, different departments, executive branches of government, and agencies have different responsibilities. The Secretary of the Interior, for example, has specific trust-holding responsibilities not delegated to any other department or agency. The Federal trust

responsibility is based upon a "corpus" or "holding" of assets such as land. The Department of the Interior's Office of American Indian Trust, has defined the trust relationship to include the protection of treaty rights. This will be discussed further in this section.

Alaska Native Rights on Federal Lands

In the lower 48 states, the United States used treaties to create public domain land and reserve certain use rights to tribes. There was no similar process that applies to the lands Alaska Natives have inhabited for thousands of years. Alaska political leaders succeeded in achieving statehood, but aboriginal land claims were not resolved as Alaska became the 49th state. Statehood brought momentum to the Native land claims movement, which basically asserted that the United States had not justly compensated Alaska Natives for the lands taken at the time of the Treaty with Russia. "The use and occupancy title of the Tlingit and Haida Indians was not extinguished by the Treaty of 1867 between the United States and Russia, nor were any rights held by these Indians arising out of their occupancy and use extinguished by the treaty. The negotiations leading up to the treaty and the language of the treaty itself show that it was not intended to have any effect on the rights of the Indians in Alaska, and it was left to the United States to decide how it was going to deal with the native Indian population of the newly acquired territory."

In the early 1960's, the State of Alaska began to select public domain land that would be placed under State jurisdiction. This created a direct threat to the Alaska Natives' aboriginal land rights and Native leaders organized to protest the selections the state was making and sought congressional settlement.

Native representatives testified at numerous hearings and mounted a vast lobbying and education effort until finally, in 1971, Congress passed the *Alaska Native Claims Settlement Act* (ANCSA). This significant legislation was unprecedented in terms of its magnitude and complexity.

Even though ANCSA articulated new public land law, it remained silent on the nature, extent, or definition of Alaska Native tribal governments. Thus, when the Forest Service considers the relationship between Alaska Natives and the Federal Government in its proposed actions and planning, we must be conscious not only of present legislation, but of past legislation, policies, and legal principles which culminated in the present Federal policies. Such policies continue to evolve, further defining and determining the nature of this unique legal relationship between Alaska Natives and the Federal Government.

ANCSA in some respects was a treaty—a law—with the U.S. Government. In return for a grant of title to about 44 million acres and other benefits for Alaska Natives, the act extinguished aboriginal title to the remaining lands Alaska Natives traditionally used and occupied. However, Congress wrote the act to deliberately exclude traditional features of treaties.

- It excluded reserves of land for exclusive use and occupancy, termed "reservations," in the lower 48.

- It made provisions for addressing the Bureau of Indian Affairs (BIA) or their delegated trust responsibilities for Indian-owned land and resources.
- Alaska Natives were not signatories to the act; American Indians were signatories to treaty documents negotiated by the U.S. before 1871.

The resolution of ANCSA provided a battleground for two dissimilar value systems—that of the Alaska Natives, whose tribal perspective viewed land and its resources as something of value to be passed on to future generations of tribal members, and that of Congress, which viewed Native corporation land as an asset that could be sold or even lost in risky commercial ventures.

Nonetheless, ANCSA provided for the grant of title to about 44 million acres to the Alaska Natives and provided for continued efforts to protect Native subsistence rights (Conference Committee Report).

ANCSA is the product of two Federal Indian policies:

- The Termination Policy of the 1950's
- The Self-Determination Policy of today

While the language speaks of self-determination, the overall goal of ANCSA was termination and assimilation. Alaska Natives were given full control over their land and money; however, Congress assigned control not to tribal governments, but to State-chartered Native corporations.

Federal courts generally support the special political status of Alaska Natives. However, complexity, ambiguity, and contradiction have not been eliminated from Indian law and policy. Even where policy seems consistent, there is still room for dispute.

Given the ambiguity of the record and political resistance to claims of "sovereignty" in Alaska, Alaska Natives have turned to practical political and social actions to strengthen their special status and cultural identities. Alaska Natives' special status is ultimately a political question, not a legal one, in which status depends less on what Federal policymakers say, than on what Alaska Natives choose to do.

The Secretary of the Interior has defined which Alaska Tribes and groups are Federally Recognized. A full listing of Federally Recognized Indian Tribes is found in the Federal Register/Vol 51, No. 226/Wednesday, November 13, 1996/Notices (pp 58211–58216). A copy may also be found in Appendix C.

Treaties

Treaty Language

Indian land title was recognized in varying ways when European countries arrived in the Western Hemisphere. The U.S. Government negotiated treaties with Indian tribal governments for western expansion, to keep the peace, and to add new states to the Union. *American Indian treaties were not a grant of rights to tribes, but rather a grant of rights from tribes, with the Indian tribes retaining all of the powers and rights of sovereign nations granted by the tribe pursuant to the treaty or taken from the tribe by Federal statute.* Extinguishing Indian title made it possible for the U.S. Government to govern former Indian lands.

Treaties between the United States and Indian tribes involving grants or cessions of land were not ordinary land transactions where the seller conveys all rights to the property sold to the buyer. In many treaties, however, Indians ceded (relinquished) title and interests to the United States Government, while *reserving* certain use rights to themselves.

The term "ceded lands" has at least two definitions. This term was first used in the Treaty of the Wyandots, 1789. Since that time, many treaties have referred to land cessions made by tribes to the United States. Most Federal agencies and Indian tribes prefer to use "ceded lands" to describe areas that a tribe did "cede, relinquish, and convey to the U.S. all their right, title, and interest in the lands and country occupied by them" ... at treaty signing or when reservations were established. This does not mean that tribes ceded all their rights. Many tribes reserved rights on ceded lands—there are places where rights remain intact and protected. The U.S Court of Claims qualified the legal definition of ceded lands in 1978 when it said that, in effect, "only lands actually owned by a tribe could be ceded to the U.S."

Sixty tribes negotiated and reserved their treaty rights on the public domain. After tribal representatives and U.S. officials signed treaties, they were then ratified by the U.S. Senate. Although some treaties were signed by unauthorized people, the treaty rights and provisions within them remained a matter of law.

Treaty provisions in the lower 48 States varied depending on the lands and the tribal groups involved in the negotiations.

The Supreme Court has found that treaties are superior to State laws, including State constitutions, and are accorded equal status with Federal statutes.

Treaty Rights on National Forest System Lands

The U.S. Constitution (Article II, Section 2, Clause 2) provides that treaties are equal to Federal laws and are binding on states as the supreme law of the land.

From 1777 to 1871, United States relations with individual Indian Nations were conducted through treaty negotiations. These "contracts among nations" created unique sets of rights for the benefit of each of the treaty-making tribes. Those rights, like any other treaty obligations of the United States, represent "the supreme law of the land." As such the protection of treaty rights is a critical part of the Federal Indian trust relationship.

Off-Reservation (Property) Rights. Off-reservation (property) rights reserved by treaties on National Forest System lands are very important to Indian tribes. *The United States has a duty to protect these treaty rights, as these rights are agreed upon by government-to-government agreement, or as defined by statute or court decision.*

Generally—

- The scope and allocation of treaty rights depends upon the language in each treaty.

Characteristics of Treaty Rights

- Some treaty rights occur on open and unclaimed or unoccupied lands (this refers to lands not in private ownership at the time the treaty was signed).
- Some treaty rights extend beyond present-day boundaries of reservations or Indian trust lands.
- Some treaties express a *priority right* for a resource; others a proportional, or *in common*, right; and others indicate a *share* to complement subsistence provided by other sources.
- Treaty rights have been upheld in courts and exercised in various ways.
- The Forest Service has no trust responsibility in treaty rights on reservation lands.

Off-reservation treaty rights that may be reserved on present-day national forests include: grazing rights, hunting and fishing rights, gathering rights and interests, water rights, and subsistence rights.

Grazing Rights

The current Forest Service Manual 2235.1 gives direction to—

> *Give Indian Tribes fair and reasonable opportunity to enjoy any treaty grazing rights reserved to them by treaty on ceded lands. Grazing rights reserved by treaty are a continuing privilege beyond that enjoyed by other citizens. The Forest Service shall not deprive Indians of treaty rights; but the Regional Forester, acting on behalf of the Secretary of Agriculture, may regulate enjoyment of the treaty grazing right for the purpose of protecting and conserving Forest Service administered resources.*

Many western tribes have treaties that provide for pasturing animals on off-reservation land. These rights, which have been upheld by the courts, have been exercised in varying ways. The allocation of grazing rights on National Forest System lands depends on the treaty language.

Based on consultation with tribes, the Regional Forester may authorize treaty-based grazing under a Memorandum of Understanding. Tribal governments are exempt from the Forest Service policy against issuing term grazing permits to governments. Therefore, Regional Foresters *may* issue treaty-based term permits to them (FSM 2204.2(13). Before issuing such a permit, the Regional Forester should consult the Office of General Counsel (OGC). Treaty grazing permits are free of charge.

Hunting and Fishing Rights

On-Reservation Rights. Tribal governments have exclusive jurisdiction over the right of tribal members and non-tribal people to hunt and fish within reservation boundaries. In a 1983 Federal Court decision, *New Mexico* v. *Mescalero Apache Tribe*, the U.S. Supreme Court upheld the tribe's exclusive right to regulate non-Indian hunting and fishing on a reservation. *Federal courts have affirmed that treaty rights are tribal rights—not individual rights.* Generally, the Forest Service has no role in treaty rights on reservation lands.

Off-Reservation Rights. Off-reservation hunting and fishing rights vary depending on treaty language, subsequent legislation, and court decisions.

Treaty rights may extend to fish and wildlife habitats, including how the Forest Service manages those habitats and how those habitats relate to national forest timber harvest, recreation, water, grazing, and minerals exploration. Some tribes believe that the U.S. Government is obligated to manage wildlife and fish habitats to protect the tribes' treaty rights.

Court decisions have confirmed that tribes are entitled to 50 percent of harvestable salmon and steelhead in certain waterways covered by treaties as long as escapement goals are met (*U.S.* v. *WA*, 1974, Dist Ct WA; U.S. Supreme Court, 1979; also *Lac Courte Oreilles* v. *Wisconsin*).

In some treaties in the Pacific Northwest, the U.S. Government is obligated to protect the tribes' right to access "*usual and accustomed grounds and stations*" and must assure that Forest Service actions do not prevent tribes or their members from accessing such locations, exercising tribal rights, and protecting treaty resources. Courts have held that if *either* hunting or fishing rights are mentioned by treaty, *both apply.*

Gathering Rights and Interests

The traditional way of life for many American Indian and Alaska Native Tribes involves gathering and using products from their natural surroundings. In some treaties, these rights were included under the term "gathering rights."

In negotiating treaty terms, many tribal governments reserved off-reservation rights to gather miscellaneous forest products such as berries, roots, bark from trees, mushrooms, basketmaking materials, tepee poles, cedar for totem poles, and medicinal plants.

These products were often bartered, traded, or sold between tribes for fuel, transportation, food, shelter, clothing, and cultural utilitarian items. In some western treaties, tribes reserved the right to cut fuelwood and firewood for domestic purposes on off-reservation land.

An example of the treaty language that refers to gathering rights and interests is "the right of taking fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the territory, and of erecting temporary houses for the purpose of curing, together *with the privilege of hunting and gathering roots and berries on open and unclaimed lands*" (Article V, Treaty with Dwamish Suquamish, 1854).

Water Rights

Indian Reserved Water Rights. Most western and midwestern states have used the *prior appropriations doctrine* to allocate water. It is based on the notion of "first in time, first in right." Basically, under State law, a water user obtains a right senior and superior to all later users if he or she appropriates the water by (1) diverting water out of a watercourse, and (2) putting it to a beneficial use for such purposes as irrigation (a major water use in the West), mining, industrial, municipal, or domestic use. Once these conditions are met, the water user has established an appropriation date.

Although Indian reserved water rights are not expressed in treaties, they are inherent or implied rights. Ordinarily, State law applies to water rights on Federal lands; however, Federal law applies to American Indian water rights on reservation lands; their extent depends on the purposes for which the reservation was established.

The *reserved water right as applied to Indians* is derived from *Winters* v. *U.S.*, 1908. This landmark Supreme Court case held that *"sufficient water was implicitly reserved to fulfill the purposes for which the reservation was established."* This *Doctrine of Federal Reserved Rights* established a vested right (a right so completely settled that it is not subject to be defeated or cancelled) whether or not the resource was actually put to use, and enabled the tribe to expand its water use over time in response to changing reservation needs. The quantity of water was determined by evaluating the purposes for which the Indian reservation was established and applied to all uses—including irrigation of lands that were not currently serviced with a water supply. This analysis includes information about current and planned (future) reservation uses such as municipal, industrial, and natural resources. The Winters Doctrine provides that tribes have senior water rights and the national forests have junior rights. Some recent court decisions have given Indian reservations priority water rights on Federal lands, including national forests.

Both the Forest Service and Indian tribes have mutual interest in water rights and claims since these rights and claims often occur in the same geographic area and involve flows from the same stream for fish populations and their habitats, as well as maintenance of stream channels, maintenance of wildlife populations, and maintenance and protection of riparian areas.

Alaska Native Subsistence Rights

Congress enacted the *Alaska Native Claims Settlement Act* (ANCSA) in 1971. To this day, some acclaim it as an outstanding settlement, while others view it as the beginning of the end for Alaska Native people. While earlier versions of ANCSA, at the insistence of Native spokespeople, contained subsistence provisions, the law that was ultimately passed, which granted Alaska Native people title to 44 million acres, remained silent on the matter of subsistence. The accompanying Conference Committee Report stated that the Interior Secretary possessed sufficient authority to protect Native subsistence rights and that Congress wanted the Secretary and the State of Alaska to do just that.

Because ANSCA failed to address subsistence, Congress included it under the *Alaska National Interest Lands Conservation Act (ANILCA)* Title VIII, which was signed into law in 1980.

Subsistence has many definitions depending on whom you speak to and in what context. To the Western/European culture, subsistence means the gathering and preparation of resources for nutritional purposes. To others, it represents a lifeway. To Alaska Natives, subsistence represents the very core of their existence as a people. It is a spiritual, cultural, physical, and economic means of continuing their heritage. It is the essence of their being.

People living in remote rural villages are totally dependent on subsistence activities to feed their families and to barter or perhaps to make some cash through the sale of handicraft articles. In rural Alaska, a cash economy is seasonal. Most money made by rural residents is spent on heating fuels, snow machines, skiffs and outboard motors, ammunition, and clothing. A majority of the food rural Alaska Natives consume is gathered through subsistence activities. These activities include, but are not limited to hunting; fishing; berry picking; canning, drying, and smoking fish; collecting and processing plants; and manufacturing arts and handicrafts.

Culturally and socially, subsistence activities are intertwined in the very existence of village life. Celebrations, stories, songs, dance, and spirituality are derived from subsistence activities. These activities teach skills that determine the future success of younger tribal members as providers and productive members of the village to ensure the perpetuation of the culture for generations to come. Through subsistence activities, children learn respect for the wildlife and fish that present themselves for use. They also learn to share, respect, and provide for their elders, care for the land, and coexist with other human beings and cultures.

Protection of subsistence activities is of vital importance to the Alaska Native. Elimination of subsistence is viewed as the termination of the Alaska Native culture.

Historically, as long as the waters and lands used for subsistence purposes were not used by others for other purposes, there was no conflict with subsistence. During the 16th, 17th, and 18th centuries, there was intense international competition for the wealth of the New World. Alaska was claimed under the "Rule of Discovery" by Russia. Alaska Natives lived harmoniously within their ecosystems and did not experience a threat to their way of life until Russia began commercial exploitation of Alaska's natural resources.

The "Rule of Discovery" held that the nation first arriving on the land in the New World acquired complete title and domination over the land and its inhabitants exclusive of other nations. The rule also included the taking and exploitation of natural resources. Russian commercial activity had a limited effect on Alaska Native subsistence. Russia's activities were focused on sea otters and Russian settlements were few and widely dispersed. Russian activities ended with the Treaty of 1867, in which Russia sold all its interest in Alaska to the United States for the sum of $7.2 million.

The U.S. Government's concern for Alaska Native subsistence is not a recent issue. Congress has dealt with subsistence as a distinct part of Alaska Native policy for at least the last 45 years. When the Indian Reorganization Act of 1934 (IRA) was originally passed, it did not fully take into account the unique needs of Alaska Natives. In 1936, the Indian Reorganization Act was amended to do so. With the signing of the Migratory Bird Treaty, and since 1936, Congress has provided for Alaska Native subsistence by way of exception to wildlife conservation treaties and statutes. There have been problems with this process, however. Exceptions have many times been ineffective and rendered useless by the restrictive provisions of other treaties. Exceptions themselves can also be a problem. An

example is the *1966 Fur Seal Convention* whereby the "method" exception for harvesting of animals was rendered useless because the treaty makers failed to recognize that Native subsistence culture depended on the "use" made of wildlife and not on how the wildlife was harvested. However, this does not mean that Congress's early attempts to protect Alaska Native subsistence were all failures.

The *Walrus Protection Act*, the *Endangered Species Act*, and the *Marine Mammal Protection Act* all recognize the importance of Alaska Native subsistence use. These acts allow Alaska Native subsistence activities for the specific purposes of food, clothing, and handicrafts. To ensure this protection, Congress has restricted the Secretary of the Interior's authority to regulate subsistence under the *Marine Mammal Protection Act*, and the *Endangered Species Act* only if the taking "materially and negatively" affects the "endangered or threatened" species.

When Congress passed ANILCA, Title VIII, it sought to "preserve for the benefit, use, education, and inspiration of present and future generations certain lands and waters in the State of Alaska that contain nationally significant natural, scenic, historic, archeological, geological, scientific, wilderness, cultural, recreational, and wildlife values" (P.L. 96–487 Sec.101(a)).

ANILCA also provided an opportunity for rural Alaskans engaged in a subsistence way of life to continue to do so. Fish and wildlife subsistence activities were to be managed in accordance with recognized scientific principles. In Title VIII, Congress found that:

The continuation of the opportunity for subsistence uses by both Native and non-Native rural residents of Alaska, on the public lands and by Alaska Natives on Native lands is essential to Native physical, economic, traditional, and cultural existence and to non-Native physical, economic, traditional, and social existence;

The situation in Alaska is unique in that, in most cases, there are no practical alternative means to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses;

Continuation of subsistence opportunities on public lands and other lands in Alaska is threatened by Alaska's increasing human populations—with resultant pressure on subsistence resources, by sudden declines in populations of some wildlife species which are crucial subsistence resources, by increased accessibility to remote areas containing subsistence resources, and by fish and wildlife being taken in a manner inconsistent with recognized principles of fish and wildlife management;

In order to fulfill the policies and the purposes of the Alaska Native Claims Settlement Act (ANCSA), and as a matter of

equity, it is necessary for the Property and Commerce Clause of the Constitution *to protect and provide the opportunity for continued subsistence uses on public lands by Native and non-Native rural residents; and*

The national interest in the proper regulation, protection, and conservation of fish and wildlife by residents of rural Alaska requires that an administrative structure be established to enable rural residents who have personal knowledge of local conditions and requirements to have a meaningful role in the management of fish and wildlife and of subsistence uses on public lands in Alaska. This is a statutory right which can be regulated and Congress chose to regulate it to the benefit of the rural user.

Section 804 of ANILCA declares:

Except as otherwise provided in this Act and other Federal laws, the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes.

Relative to how subsistence rights affect land use decisions, ANILCA, Section 810, states:

In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his/her designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would produce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes.

Section 810 requires the head of such a Federal agency to:

Give notice to the appropriate State agency and the appropriate local committees and regional councils established pursuant to Section 805; (See P.L. 96–487, Section 805,(a),(b)&(c)).

Give notice of and hold a hearing in the vicinity of the area involved; and

Determine that:

(a) Such significant restrictions of subsistence are necessary, and consistent with sound management principles for the utilization of the public lands;

(b) The proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition; and

(c) Reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions.

Section 811(a) of ANILCA directs the Secretary of the Interior to ensure that:

> *Rural residents engaged in subsistence uses will have reasonable access to subsistence resources on the public lands.*
>
> *Federal and State agencies will undertake research on fish, wildlife, and subsistence use on public lands.*
>
> *Data will be sought and local residents consulted to gain special knowledge from those engaged in subsistence uses.*
>
> *Findings and results will be made available to the State, local, and regional councils and other appropriate persons and organizations.*

ANILCA Section 805(3)(D)(d) empowers the State of Alaska to implement laws of general applicability which are consistent with, and provide for the definition, preference, and participation in subsistence specified in ANILCA, Sections 803, 804 and 805.

In 1989, the Alaska Supreme Court ruled that the subsistence priority for rural Alaskans violated the State constitution. This holding prompted the State of Alaska to discontinue its subsistence program on Federal lands. In response, the Secretary of the Interior promulgated regulations for subsistence hunting and fishing on Federal lands in Alaska. In effect, the Federal Government took over the management of subsistence on Federal lands in Alaska. Both the State of Alaska and Alaska Natives filed suit, challenging the legality of these regulations. The Ninth Circuit Court of Appeals upheld the Federal Government's exercise of regulatory authority over "subsistence uses on Federal lands, waters, and interests therein in Alaska, including waters subject to Federal reserved water rights."

Trust Responsibilities

The trust responsibility is the U.S. Government's permanent legal obligation to exercise statutory and other legal authorities to protect tribal lands, assets, resources, and treaty rights, as well as a duty to carry out the mandates of Federal law with respect to American Indian and Alaska Native Tribes.

Federal Indian Policy and "trust responsibilities" have developed from court decisions, congressional laws, and policies articulated by the President.

The trust responsibility is a legally enforceable obligation, a duty, on the part of the U.S. Government to protect the rights of Federally Recognized Indian

Tribes. In several legal cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of dealings between the U.S. Government and Indian tribes.

For the Forest Service, trust responsibilities are essentially those duties that relate to the reserved rights and privileges of Federally Recognized Indian Tribes as found in treaties, executive orders, laws, and court decisions that apply to the national forests and grasslands. For Forest Service activities, the trust responsibilities are defined primarily by the authorities listed FSM 1563.01 (a copy of which is in Appendix A), and by treaties which may apply to specific areas of the National Forest System. Treaty rights on National Forest System lands are interpreted and applied by the Court.

One of the Forest Service duties is to consult and coordinate land and resource projects and activities on National Forest System lands adjacent to or adjoining Indian tribal lands to—

- Consult with Federally Recognized Tribes with whom the United States has a government-to-government relationship. (See Appendix C for a list of Federally Recognized Tribes.)
- Gain knowledge of adjoining Indian tribes' interests and rights. Seek this knowledge from within the Forest Service and from Indian tribes.
- Determine if a tribe(s) has reserved rights by treaty or other interests upon National Forest System lands. Work with your Lands staff to determine if treaty rights apply.
- Honor rights that apply to National Forest System lands, consistent with other Federal laws.
- Seek the advice of other Forest Service staff or of OGC in applying treaty rights.
- Consult with Indian tribes on plans, projects, programs, or activities that may affect the tribe's reserved rights on the National Forest System lands.
- Incorporate the information from such consultations into planning documents and the decisionmaking process.
- Show tribes how their information was used.
- Facilitate access, consistent with Federal law, so that tribal members may exercise rights reserved by treaty.
- Recognize that some, but not all, occupancy and use regulations related to National Forest System lands may apply to tribes and their members in the exercise of treaty rights.
- Consult between tribes, the Forest Service, and other parties as necessary to resolve conflicts that may arise.

Fulfilling the trust duty is accomplished through actions, not by writing books or environmental documents, not through process or procedure. The duty is redeemed by protecting a stream or animal habitat; by facilitating the exercise of treaty rights or the traditional cultural practices of Indian tribes and their members; and by continuing to work on a government-to-government basis.

Mutual cooperation and the development of government-to-government relationships between the Forest Service and Federally Recognized American Indian Tribes and Alaska Native Tribes should lead to the effective performance of trust duties and responsibilities. Developing and sustaining these relationships is a fundamental action which fulfills these mutual responsibilities.

NEPA Consultation

In 1994, President Bill Clinton held a Tribal Summit, hosting elected representatives from all Federally Recognized Tribal governments within the United States, where he articulated the government-to-government policy of his administration. The following sections of his memorandum to heads of executive departments and agencies refer to the role of government-to-government consultation in planning. (A copy of the complete memorandum is on page 7 in the introductory part of this document.)

a) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with Tribal governments prior to taking actions that affect Federally Recognized Tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals.

b) Each executive department and agency shall assess the impact of Federal Government plans, projects, programs, and activities on Tribal trust resources and assure that Tribal government rights and concerns are considered during the development of such plans, projects, programs and activities.

Treaties, acts of Congress (which may apply in Alaska), and executive orders after 1871, also obligate the United States and its agencies to fulfill certain trust responsibilities. Planning documents should discuss this complex and legal relationship. Certain reserved rights may need to be protected by special land and resource management actions.

The Forest Service has an obligation to consult with Federally Recognized Indian Tribes on a government-to-government basis throughout the Forest Service planning process.

The *National Environmental Policy Act (NEPA)* of 1969 (P.L. 91–190) implementing regulations require Federal agencies to invite Indian tribes to participate *in the scoping process* on projects or activities that affect them. Tribes with treaty rights on National Forest System lands may also meet with line officers in advance of the formal planning processes about their reserved rights.

- *Initiate consultation prior to the public scoping announcement.* Particularly if a tribe has reserved rights upon National Forest System lands or cultural/spiritual or other interests upon the area.
- *Contact any tribal government that may be affected by the proposed action or decision.*

Tribes may have reserved rights on present-day National Forest System lands. They may also have resource or confidential information on a proposed project area.

- This *does not mean* that a forest or district must wait for tribal concurrence.
- This *does not mean* that the time schedule needs to be arranged to accommodate tribal response.
- It *does mean* the Forest Service should be consulting, communicating, and coordinating regularly with the affected tribes.

Early consultation may simplify the planning process for proposed project areas that contain sacred sites or artifacts by providing them with the protection that they deserve.

Reserved treaty and subsistence rights outside reservation boundaries are essentially exercised in common with non-Indian citizens. These rights may even take place on former Indian lands which are now managed by the National Forest System. Neither NEPA nor the Council on Environmental Quality (CEQ) regulations mention these preexisting rights. A November 1993 directive signed by the Secretary of the Interior requires that environmental documents prepared by Interior agencies include a discussion of American Indian reserved treaty rights and the effects a pending Federal decision may have on these rights. As of yet, USDA does not have a similar policy.

The following outline may apply to either a Forest Plan or a proposed land management project. Environmental assessments do not require indepth discussions—neither do small projects or undertakings that do not affect reserved rights or tribal interests.

As technical advice to address the various aspects of American Indian rights and interests, we recommend including document sections and categories, titled and developed as follows:

Chapter I—Purpose and Need for Action.

A. If restoration, rehabilitation, or enhancement of resources constituting a treaty right or other reserved right are part of the underlying need for a proposal, state this in the *Purpose and Need* section of Chapter I. For example, a proposed action intended to rehabilitate anadromous fish habitat or wildlife habitat in an area where a tribe has a treaty right to fish or hunt wildlife should include a discussion of the treaty right as a part of the underlying need for the proposal.

B. If consultation with a tribe shows there is an issue related to treaty rights or other rights or interests, discuss alternatives to the proposal as early as possible. If necessary, develop mitigation measures. Incorporate this analysis into Chapters II through IV.

C. Whenever A or B is applicable, include the following in the document:

1. An excerpt from the treaty(s) applying to the area.
   a. List the resources, related to the proposed action, mentioned in the treaty, executive order, or statute.
   b. Discuss any regulation that may also apply to these rights.
   c. Illustrate and discuss the land area affected by the treaty or executive order.
2. List the names of tribe(s) and their respective governing bodies that may have an interest in participating in government-to-government consultation.

D. If there is no significant issue related to treaty or other tribal rights, place this "finding" and supporting documentation (such as letters from the tribe or meeting notes) in the project record and reference it in the NEPA document (in Chapter I; Chapter II, where we discuss scoping and sorting of issues into nonsignificant/significant (1501.7); Chapter IV; or in an appendix. *For some project proposals there will be no effect on, or conflict with, American Indian rights. Once this finding has been made and documented, no additional discussion/analysis is required in the NEPA document.*

E. In the case of broad, programmatic NEPA documents (such as the EIS for a forest plan revision), Chapter I should discuss all treaty and other rights and their relationship to the proposed action if they are related to the purpose and need.

Chapter II—Alternatives Including the Proposed Action

A. Whenever a proposed action may potentially affect lands that support treaty resources—more than environmental considerations are at issue. Treaty or other tribal rights may be a part of the underlying need for the proposal, or there may be a significant issue related to the treaty or other tribal rights; Chapter II of the NEPA document should clearly indicate that the proposed action and all alternatives meet Forest Service requirements and comply with American Indian treaties, executive orders, or statutory rights and address individual Indian interests.

B. Where the alternatives use different means to assure that treaty or other tribal rights are protected, Chapter II of the NEPA document should include a comparison of these differences.

Chapter III—Affected Environment

A. Introduction: The first few paragraphs should include a short reference to the treaty resources potentially affected by the proposed action.

B. Trust, treaty, or subsistence resources and their location:

Discuss in general terms, what, if any, areas, sites, or streams have or support treaty resources. This section can be brief yet illustrate that more than environmental considerations are at issue. In the case of programmatic documents such as EIS's for forest plan revisions, it should also include a map of any land ceded to the United States via treaty or other document.

There should be a discussion of overall Forest Service land management goals, including duties to honor treaties or acts of Congress for subsistence use of resources.

Where possible, include the extent of the rights identified and where these rights occur on the forest. The existence of a treaty reserved right may hold a priority for a specific site or location over a proposed action.

This discussion may also include certain cultural resources that would have a direct effect on the proposed alternative and, consequently, the Forest Service's ability to maintain confidentiality of the information gathered about cultural sites or resources.

C. Environmental Components within the Project or Planning Area—Each of these resources, if they are related to the proposed action, needs to have associated with it, a discussion of a trust duty that may impose upon the Forest Service a need for special

consideration or protection. For a "project," discussion can be limited to those aspects related to the project. For a broader, programmatic NEPA document, such as the EIS for a forest plan revision, a more detailed discussion is needed for—

1. Topography (include a map of ceded lands or a reference to them)
2. Climate
3. Water—an implied right that needs protection
4. Fish—a treaty or subsistence resource
5. Wildlife—a treaty or subsistence resource
6. Grasses—a treaty resource for gathering rights
7. Plants, Roots, and Bulbs—medicinal/spiritual or a reserved right
8. Riparian Areas—how they affect fish and their habitats
9. Cultural Resources—while these are not reserved rights, they may be tribal or individual Indian interests. Discussions should remain consistent with existing cultural resource laws and executive orders.

D. Decision Notice or Record of Decision—In decisions where the treaty or other tribal rights were identified as a significant issue within the proposed action, the decision document should explain how this issue was considered in the decisionmaking process.

For some Forests and Regions this may be a first look at the unique relationship that Federal agencies have with Indian Country. (Please also refer to Forest Service Policy stated in FSM 1563—Appendix A.)

CEQ References: The CEQ regulations (40 CFR 1500–1508) for implementing NEPA refer to American Indian tribes and their role in NEPA analysis in several places:

- 1502.16 (c)—Discussing effects of the proposed action on Indian plans
- 1503.1 (a)(2)—Requesting comments from American Indian and Alaska Native Tribes
- 1506.6 (3)—Providing notice to tribes when effects may occur on reservations
- 1508.5—American Indian tribe as a "cooperating agency" in NEPA analysis

Cooperation in Management

The *Organic Act*, the *National Forest Management Act*, and other similar statutes require the Forest Service to manage National Forest System resources in a manner that serves the needs of the general public.

National forest management must consider a myriad of rights, other than treaty rights, to Federal land. While use conflicts may occur between these various rights, they can generally be resolved by mutual effort.

Joint and comanagement continues to be an issue between the tribes and the Forest Service. The tribes have interpreted joint or comanagement to mean codecisionmaking. Others interpret it to mean shared management in the sense of sharing information and ideas on management actions. The Forest Service has not accepted these interpretations.

The Forest Service can usually provide for Indian gathering, hunting, and similar reserved rights while meeting its land and resource mission. The key to this success is mutual cooperation through consultation and agreement with affected Indian tribes and individuals.

Section 3: Addressing Traditional Beliefs and Practices

Ignorance is one of the greatest barriers to understanding between two peoples. If we don't understand each other, if we do not know the culture, the languages, or the history of each other, we are unable to see each other as human beings with value and dignity. This is especially true in relations between Indians and non-Indians.

—William C. Wantland (1975)
Former Attorney General
Seminole Nation of Oklahoma

Administer programs and activities to address and be sensitive to traditional American Indian and Alaska Native religious beliefs and practices (American Indian/Alaska Native Policy, (FSM 1563)).

- Walk the land with American Indians and Alaska Natives to gain an understanding and appreciation of their culture, religion, beliefs, and practices.
- Identify and acknowledge these cultural needs in Forest Service activities.
- Consider these values an important part of management of the national forests.

This section includes information about—

- Traditional Beliefs
- Practices/Uses/Sites of Spiritual Importance
- Laws Affecting Management of Historic, Cultural, and Traditional Uses of National Forest System Lands
  - Antiquities Act of 1906
  - Archaeological Resources Protection Act of 1979
  - American Indian Religious Freedom Act of 1978
  - American Indian Religious Freedom Act Amendment of 1994
  - Religious Freedom Restoration Act of 1993
  - Native American Graves Protection and Repatriation Act of 1990
  - National Historic Preservation Act of 1966, as amended 1992
  - Indian Sacred Sites Executive Order 13007 of 1996

Traditional Beliefs

Most American Indian tribes and individual tribal members conceive of spirituality, or sacred sites and activities, as including all aspects of their way of life—a "wholistic" or all-inclusive existence. Indian people believe all living things are interconnected. The spiritual and natural worlds are not separate. Spirituality is a part of everyday life. For example, food roots are

not only necessary for subsistence, but also possess spiritual significance and serve ceremonial purposes. Therefore, gathering sites are not just subsistence sites, they may be traditional, cultural places.

To Alaska Natives, subsistence represents the very core of their existence as a people. It is a spiritual, cultural, physical, and economic means to continue their heritage. It is the essence of their being. Celebrations, stories, songs, dance, and spirituality are derived from subsistence activities. These activities teach skills that determine the future success of younger tribal members as providers and productive members of the village and ensure the perpetuation of the culture for generations to come. Through subsistence activities, children learn respect for the wildlife and fish that present themselves for use. They also learn to share, respect, and provide for their elders, care for the land, and coexist with other human beings and cultures.

The Alaskan experience clearly illustrates that where some non-Indian cultures may make a distinction between an economic or subsistence activity and a spiritual one, Indian people might consider both to have spiritual significance. This difference in world-views between Indian cultures and many non-Indian cultures is critical in this discussion, because laws that apply to traditional cultural properties may apply to many sites that some non-Indian cultures might not readily recognize as spiritual in nature, such as gathering sites.

Practices/Uses/ Sites of Spiritual Importance

Indian people determine what is of spiritual importance to them. *It is the responsibility of the Forest Service line officer to consult with Indian people when Forest Service activities may affect spiritual or cultural practices, uses, sites, or areas.* To gain accurate information about Indian cultural activities, it is best to—

- Consult with traditional tribal members, spiritual practitioners, and elders.
- During this consultation, keep in mind that the aboriginal territory of a tribe may extend beyond present reservation or Indian community boundaries.
- *Consult on a case-by-case basis and include treaty tribes and tribes with a legal, historic relationship to a geographical area now occupied by another group.*

A Forest Service line officer may have to decide among many land uses, all of which may have legitimate, but conflicting, interests in the same landscape. Forest Service leaders and managers must recognize and try to harmonize American Indian and Alaska Native cultural values as well as other management values that may occur on the same piece of land, and weigh potential impacts.

Traditional practitioners may feel any use, other than ceremonial, will desecrate an area. Traditional use does not necessarily mean use which occurs in the same location today as it did in the past. Rather it means use

by Indian people in keeping with their traditional culture. Traditional practices may take place in nonaboriginal areas for tribes who were moved from their aboriginal territory or for individuals no longer living within their aboriginal territory. Some use the terms "contemporary sacred sites" and "traditional sacred sites" to differentiate between areas of historical use and those of current use. The key is that the activity is in keeping with the traditional culture. *Line officers must consult with local tribes when they consider a request from a tribal group or individual to conduct traditional activities in nonaboriginal areas.*

Generally, tribes do not need permission or authorization to practice spiritual or cultural activities if a treaty reserves rights for such activities. However, special use authorizations or other types of agreements, such as Memorandums of Understanding or Agreement, may help formalize the responsibilities of both the tribe and the Forest Service. These agreements may:

- Address resource conservation requirements or fire danger.
- Assure that no conflicting uses occur during a tribe's use of an area.

A permit does not mean the Forest Service is granting permission for the activity, but rather that the Forest Service is documenting that the activity will occur and what safeguards are necessary for resource conservation and human safety. Information gathered during consultation with Indian people about the requested use(s) of the land will help shape the content, goals, and type of agreement needed.

Take care to ask tribes or tribal members only those questions pertinent to the issue that necessitates an agreement, such as issues related to resource protection or safety and sanitation needs. In most cases, number of individuals and length of stay are the primary concerns. Asking specific questions about the nature of the ceremonies is usually unnecessary.

Laws Affecting Management of Historic, Cultural, and Traditional Uses of National Forest System Lands

Several general environmental statutes include provisions for managing significant cultural resources on National Forest System lands. *The National Environmental Policy Act of 1969 (NEPA)* and the *Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA)*, as amended by the *National Forest Management Act of 1976 (NFMA)*, all address the need to identify, evaluate, and protect significant cultural sites and to consult with American Indian and Alaska Native peoples. (For more information on NEPA consultation, see Section Two.) In relation to cultural resources, these laws all draw upon the direction provided in the *National Historic Preservation Act (NHPA)* and provide the broad management context within which NHPA specifically addresses protection of cultural heritage.

The following discussion summarizes the laws that affect cultural resources. These key points are by no means exhaustive; they are merely those that have the most direct bearing on management of traditional cultural sites and practices.

Antiquities Act

The Antiquities Act of 1906 (P.L. 59–209)—

- Provided penalties for the illegal removal, disturbance, or destruction of any object of antiquity on Federal lands.
- Authorized the President to designate national monuments to protect historic and prehistoric structures and other objects of historic or scientific interest.
- Stipulated that when such structures or objects are situated on land covered by an unperfected claim, or in private ownership, the land required to protect the structures or objects can be relinquished to the Federal Government.
- Required permits for the examination, excavation, or gathering of objects of antiquity on Federal lands.

The penalties provided under the Antiquities Act of $500 and/or 90 days in jail were so small as to be ineffective when large-scale looting and black market sales of Indian artifacts became apparent in the 1960's. Subsequently, this act was replaced by the *Archaeological Resources Protection Act (ARPA)* to increase criminal penalties and to require permits for legal excavation and removal of objects of antiquity. However, the Antiquities Act is still used to designate national monuments.

Archaeological Resources Protection Act (ARPA)

The purpose of the Archaeological Resources Protection Act of 1979 (ARPA) (P.L. 96–96) (Implementing Regulations at 36 CFR 296) is "to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands." ARPA—

- Sets felony-level penalties for destruction or theft of archeological resources and facilitates effective law enforcement.
- Establishes a permit system and standards for institutions or individuals wishing to do archaeological research on Federal lands.
- Requires the Regional Forester to notify any Indian tribe that may consider a site to have religious or cultural importance 30 days prior to issuance of the permit. This responsibility has been delegated to Forest Supervisors.
- Stipulates that records and locations of archaeological sites and sensitive cultural properties are exempt from disclosure under the Freedom of Information Act (FOIA).

ARPA permits on Indian reservation or trust lands require tribal council consent. For permits on National Forest System (NFS) lands, ARPA specifies only that tribal councils be notified. *While tribal council consent is not necessary for permits on NFS lands, it is in the best interest of the Forest Service to reach resolution of tribal council objections to such permits.*

American Indian Religious Freedom Act (AIRFA)

The American Indian Religious Freedom Act of 1978 (AIRFA) (P.L. 95–341) states that it is the policy of the United States "to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including, but not limited to, access to sites,

use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."

AIRFA is based on the fact that often, because of lack of knowledge, laws designed for "such worthwhile purposes as conservation and preservation of natural species and resources" result in the abridgment of religious freedom of American Indian and Alaska Native practitioners.

Implementing regulations were never written for AIRFA and the well-known "G-O Road" case *(Lyng* v. *Northwest Indian Cemetery Protective Assoc., 485 U.S. 439, April 19, 1988)* set a precedent for its interpretation.

The G-O Road case seemed to prove that AIRFA could do little to actually protect sacred sites, but it *did* reaffirm the responsibility of Federal agencies to insure that their policies and practices did not infringe on Indian religious freedom and that Federal agencies make a good faith effort to consult with Indian people about protecting sacred sites.

The findings in the "G-O Road Case" were based on the fact that the Forest Service made considerable effort to mitigate the impacts of road construction on Indian spiritual practices. The court found that "[N]othing in our opinion should be read to encourage governmental insensitivity to the religious needs of any citizen. It is difficult to see how the Government could have been more solicitous. Such solicitude accords with the policy of the United States expressed in the American Indian Religious Freedom Act to protect and preserve the Indians' access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."

While the G-O Road ruling was disappointing to tribes, it did emphasize the need for Federal agencies to make a good faith effort to protect traditional uses and sites. AIRFA does provide an avenue for sensitive responses to traditional use needs.

The primary decisionmaking responsibility under AIRFA is with the involved Federal agency. AIRFA does not mandate access to public land for traditional use purposes nor does it mandate that Indian traditional use and spiritual concerns take precedence over other valid, competing uses. The avenues for tribes to resolve disagreements under AIRFA are the Forest Service's internal appeal process and filing suit in Federal courts.

Over the last 5 years, several bills have been proposed to strengthen AIRFA, but, to date, none have been signed into law. In 1994, the "American Indian Religious Freedom Act Amendment of 1994" was signed, but the title is misleading as it addresses only the use of peyote.

American Indian Religious Freedom Act Amendment

Commonly referred to as "the Peyote Bill," the American Indian Religious Freedom Act Amendment of 1994 (P.L. 103–344) states that "Notwithstanding any other provision of law, the use, possession, or transportation of peyote by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion is lawful, and shall not be prohibited by the United States or any State..."

This amendment also provides a definition of *Indian Religion* as "any religion which is practiced by Indians and the origin and interpretation of which is from within a traditional Indian culture or community..."

Religious Freedom Restoration Act

The Religious Freedom Restoration Act of 1993 (P.L. 103–141) statute mandates that the "government should not substantially burden the free exercise of religion without compelling justification." The act further provides a claim or defense to persons whose religious exercise is substantially burdened by the government.

Native American Graves Protection and Repatriation Act (NAGPRA)

The Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (P.L. 101–601) (Implementing Regulations at 43 CFR 10) addresses the rights of lineal descendants and members of Indian tribes, Alaska Native, and Native Hawaiian organizations to retain certain human remains and precisely defined cultural items. It covers items currently in Federal repositories as well as future discoveries. NAGPRA requires Federal agencies to:

- Prepare inventories of remains in their possession.
- Consult with affiliated American Indian and Alaska Native tribal groups about the repatriation or treatment and disposition of these remains.
- Establish a process for the return, upon request, of institutionally held skeletal remains, grave items, and other sacred objects to their groups of cultural affiliation.
- Establish a process for the return of skeletal remains, grave items, and other sacred objects discovered during planned cultural resource inventory, evaluation, or excavation projects, as well as inadvertent discoveries.

The Forest Service, having completed the necessary inventories and summaries of materials in its possession, will focus on ongoing consultation, new discoveries, and the continuing process of repatriation.

National Historic Preservation Act (NHPA)

The National Historic Preservation Act of 1966 (NHPA) (P.L. 89-665) (Implementing Regulations at 36 CFR 800 and 36 CFR 60) states that "the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people." The 1992 amendments to NHPA strengthen requirements for cooperation between Federal agencies and American Indian tribes and Native Hawaiian Organizations. NHPA, as amended, and its implementing regulations in 36 CFR 800—

- Establish the National Register of Historic Places and authorize regulations for State Historic Preservation Offices (SHPOs).
- Designate a process to inventory, evaluate, protect, and interpret significant historic and archaeological sites.
- Direct Federal agencies to consider the effects of their actions on significant cultural resources during all phases of planning and project implementation. A recent court decision (*Pueblo of Sandia* v. *United States*, 50 F.3d 856, 10th Cir. 1995) *states that during consultation with tribes to determine effects of government actions on sites, the Forest*

Service must make a good faith effort to elicit tribal concerns beyond just sending a letter to the tribe.

- Direct the Federal Government to work in partnership with Indian tribes to provide leadership in the preservation of the prehistoric and historic resources of the United States.
- Direct the Federal Government to assist Indian tribes and Native Hawaiian organizations to expand and accelerate their historic preservation programs and activities.
- If the tribe meets the guidelines and responsibilities of that office as specified by the act, authorize tribes to assume the role of historic preservation officer on tribal land.
- Strengthen the Federal agencies' ability to maintain the confidentiality of sensitive material by giving them the authority to withhold sensitive locational or cultural information from public disclosure if that disclosure may—
  - Cause a significant invasion of privacy.
  - Risk harm to the historic resources.
  - Impede the use of a traditional religious site by practitioners.

Unlike ARPA, the Forest Service cannot unilaterally withhold documents it thinks are confidential. It must consult with the Keeper and the Council on such withholdings (Section 306 of NHPA; 16 U.S.C. 470w-3). The 1992 amendments say that "properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register."

There has been considerable debate over this point. National Park Service Bulletin 38, "Guidelines for the Evaluation and Documentation of Traditional Cultural Properties" states "the National Register is not the appropriate vehicle for recognizing cultural values that are purely intangible, nor is there legal authority to address them under Section 106 of NHPA unless they are somehow related to a historic property." Internal Forest Service direction, (USDA Forest Service, Chief's Office 1991—Appendix A) amplifies this view: "A property may be eligible to the National Register of Historic Places and may have traditional values associated with it, but traditional values do not make an area eligible unless they are directly associated with a historic property."

When deciding whether to address a traditional cultural property concern under NHPA or AIRFA, keep in mind that properties determined to be eligible for the National Register through the NHPA consultation process are not guaranteed protection. NHPA is a procedural law, directing the Forest Service to mitigate adverse effects to significant properties. Since effects to spiritual values and sacred sites are often "not mitigatable," NHPA may not offer the kind of protection often sought for these types of sites.

Indian Sacred Sites—Executive Order 13007

On May 24, 1996, President Clinton signed Executive Order 13007, titled "Indian Sacred Sites." This executive order directs Federal agencies "to the extent practicable permitted by law and not clearly inconsistent with essential agency functions to:"

- Accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners.
- Avoid adversely affecting the physical integrity of such sites to the extent practicable.
- Maintain the confidentiality of sacred sites.
- Submit a report to the President on May 24, 1997, listing any changes necessary to accommodate access and use of sacred sites, changes in procedures implemented or proposed to facilitate consultation with Indian tribes and religious leaders relative to this order as sacred by virtue of its established religious significance to, or ceremonial use by an Indian religion.

A sacred site is defined as being "any specific, discrete, narrowly delineated location on Federal land, identified by an Indian tribe or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion, provided that the tribe or individual has informed the agency of the existence of such a site."

EO 13007 addresses only Federally Recognized Tribes and does not affect efforts to protect sites important to non-Federally Recognized Tribes. The order is not intended to create any additional right, benefit, or trust responsibility. Currently, the Forest Service is working with other Federal agencies to develop implementation procedures for EO 13007. A copy of this executive order may be found in Appendix A.

Summary

The laws, regulations, and policies described here emphasize the importance of American Indian/Alaska Native involvement at the earliest possible planning stages and provide a framework for consultation. The Forest Service retains the responsibility to make the final decision, taking into consideration all of the information learned through the consultation processes. These statutes promote open dialog, possible solutions, compromise, and most importantly, a climate in which tribal governments and the Forest Service can work together to protect resources and values.

Section 4: Opportunities for Research, Transfer of Technology, and Technical Assistance

Provide research, transfer of technology, and technical assistance to Indian tribal governments.

- Together, develop research and environmental programs to meet American Indian's objectives.
- Extend Forest Service programs to tribal governments.
- Exchange and share technical staffs and skills.

This section includes information about opportunities for—

- Collaboration on ecosystem management
- Collaboration on research
- Collaboration on technical assistance
- Additional opportunities

The Forest Service and tribes often share similar ecosystem management and resource conservation goals. We need to collaborate with tribal governments to benefit both government's forested ecosystems, communities, and, ultimately, the world in which we live. It is time to include tribes in all Forest Service programs. Our relationship with tribal governments needs to be a corporate, ACTIVE partnership for the ACCOMPLISHMENT of mutual goals across the forested ecosystem!

Collaboration on Ecosystem Management

As my mother taught me, and she in turn was taught, the plants, animals, birds—everything on this earth—they are our relatives, and we had better know how to act around them or they will get after us.

—Kathleen Rose Smith, Mihilakawna
Pomo/Olemitcha Miwok

Because ecosystems extend beyond land ownership boundaries, cooperation and collaboration between national forest, tribal, state and private landowners and governments is essential. Cooperation and collaboration involve the exchange of research, technology transfer, technical assistance, shared skills, and cooperative planning, land and resource programs, and project activities among all parties who have interest in the ecosystem.

Tribes and their members can contribute traditional ecosystem knowledge. Traditional ecosystem knowledge is generally defined as a body of information and skills learned and passed down by clans, societies, and tribes through generations of living in a close relationship with the land and resources. It includes a framework of classification, a set of empirical observations about the local environment, and a manner of living in balance and harmony with all things.

Traditional knowledge is adaptive and dynamic and offers a means to evaluate new technologies and socioeconomic situations. It also offers a unique opportunity for sharing knowledge and expertise that are vital to land and resource survival, restoration, and management. Such knowledge as may be shared should prove valuable to Forest Service goals and objectives.

As the first people who cared for the lands now known as national forests and grasslands, tribes can tell us something about the ecosystems of the past and how to manage ecosystems today for present and future generations. Indian people's long history of living and learning about the land and its resources can contribute to understanding the relationship among all things within an ecosystem.

The Forest Service should consider traditional knowledge in managing ecosystems in the same manner as American Indians and Alaska Natives use western science to assist them—blending all information so that outcomes benefit all.

To many Indians, community identity and survival are dependent on continued access to national forests and use of certain landscapes that contain key resources and locations. For example, certain plants are meaningful in restoring balance to the world, by ensuring the passage of a child into adulthood, and to health and social well-being. Maintenance of traditional gathering, hunting, fishing, and other activities is a particularly acute issue for American Indian and Alaska Native peoples, who are affected by changes in access to or availability of these important resources. The loss of traditional plants, uses, practices, and learning are a critical issue to Indian and Alaska Native tribes and their peoples.

Traditional knowledge may not only improve the Forest Service's understanding of national forest ecosystems, but also guide the maintenance of uses and needs of American Indian and Alaska Native peoples.

The Forest Service should incorporate traditional knowledge in ecosystem management by learning from the people who have lived on and cared for the land for millennia. In turn, the Forest Service can share its own expertise, data, and technology across administrative boundaries.

As an example, California Indians have employed a body of knowledge and a variety of management methods to foster the production and quality of certain plants and animals in selected locations and predictable times over the centuries. They have burned the land to create and maintain certain kinds of landscapes. They have coppiced, pruned, and cultivated native plants. A complex system of spiritual, social, and political practices governed the use of plants and foods.

Today, National Forest, Research, and State and Private forest ecosystem managers consult with these tribes to identify what forested ecosystems were like in the past and how they can be restored and maintained.

Collaboration in Research

The Forest Service's Research Branch provides scientific knowledge and technology to improve management, protection, and use of forest and rangelands. Research programs focus on a variety of natural resource issues such as global change, biological diversity, forest health, ecosystem dynamics, and resource productivity and sustainability.

Since ecosystems extend beyond land ownership and governmental boundaries, Forest Service Research work often requires cooperation and collaboration with many entities, including tribal governments.

Seek the tribal perspective on research needs or on information sought as ecosystem strategies are developed. Examples of research collaborations are on the next page.

Examples of Research Programs

- An example of current collaborative research work involving tribal governments includes the Chippewa Tribe, which has off-reservation rights to gather miscellaneous forest products from national forests that are within the territories ceded by the 1837 and 1842 treaties. To exercise these rights, the Chippewa developed a joint research and monitoring initiative through the Great Lakes Fish and Wildlife Commission and the Northeast Research Station to "investigate acceptable harvest levels of wild plants and examine the effects other management activities on these species; properly monitor harvests; and participate in the long-range planning efforts to ensure that wild plant resources continue to be provided on Forest Service managed lands." The tribe singled out ginseng and club moss for specific research. These species are currently relatively rare or endangered and there is little information on sustainable harvest levels.

- Many forests confer with traditional basketweavers to learn how to manage basketry materials. Fire prescriptions, land management plan direction, and other resource management activities are perpetuating the basketry resource and helping sustain the tradition and the ecosystem. In turn, the whole Forest Service is sharing the new technology, resource data, and management prescriptions with tribes for their use.

- A cooperative agreement between the Kenaitze tribe and the Forest Service established the Kenaitze Interpretive Site on Alaska's Chugach National Forest in 1992 to preserve, protect, and present the area's important archeological and natural resources. Tribal youth depict Dena'ina life through drawings, exhibits, and traditional dancing; tribal elders share family memories of living, hunting, and trapping on the land. Dena'ina values, customs, and history are presented at the site. The site rests on the Russian River—a very popular red salmon fishing area during the summer months. Because of its accessibility, the site and its resources had become damaged. Collaboration with the Kenaitze tribe has led to providing protection, preservation, and interpretation of a very significant Alaska Native cultural site.

- Burns Paiute Elders, in field visits on Oregon's Ochoco and Malheur National Forests, are providing knowledge to Forest Service botanists, ecologists, and land and resource managers about the American Indian names and uses of the many plants that are used by the tribe. The tribe can also provide knowledge on keeping these important plants in place or within the forested landscape.

Collaboration on Technical Assistance

The Forest Service's State and Private Forestry (S&PF), National Forest System, and Research Programs offer technical assistance to tribal governments. This section will focus on the unique Forest Service program opportunities.

The Nation's commitment to our forest resources provides a 100-year history of legislation directing the Forest Service to assist State and private landowners including Indian tribes. Forest Service partnerships and programs support forest and tree stewardship with private, community, tribal, State, and industry forest resource owners and managers.

The Forest Service's Cooperative Forestry Branch, in partnership with State Foresters and other key partners (such as Indian tribes), connects Federal natural resource management programs, expertise, and objectives to the Nation's rural and urban communities.

Cooperative Forestry generates and supports partnerships that—

- Design, deliver, and manage programs that advance tree and forest resource stewardship and sustainability and align national forest resource management goals with community, landowner, and tribal objectives.
- Strengthen the capabilities and capacities of State and local forest resource agencies and organizations including Indian tribes.
- Improve the capacity of non-Federal forest lands to meet the Nation's need for forest resources and multiple benefits.
- Convene and facilitate the interests and energies of natural resource focused publics.
- Employ and advocate nonregulatory approaches and respect for private property rights.

Examples of Cooperative Forestry Programs

- The Pueblo of Zuni in New Mexico has received a grant to develop a furniture factory using local materials. The project provides an economic opportunity for the Pueblo and its individual members, and a product that is unique to the Southwest.
- The Port Gamble S'Klallam Tribe of Washington state has received a grant to construct a 6,000-square-foot longhouse cultural center—a timber frame building with carved cedar posts.
- The Tuolumne Me-wuk Tribe has received a grant and technical assistance for developing a native plant nursery. The nursery provides traditionally important plants for traditional purposes, native plants for ecosystem restoration (on and off the national forest), and jobs for tribe members.

Examples of National Forest System and State and Private Forestry Programs

- For many years, the Forest Service's fire management program has employed American Indian firefighting crews. Some tribes, such as the Kiowa and Comanche, are new to this activity and have been recently trained and activated for wildfire suppression.
- Self-governance tribes (those assuming the programs and activities formerly performed for their benefit by, essentially, the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) are considering addressing their fire management needs or responsibilities by participating in interagency fire groups.
- The Eastern Cherokee Tribe, in conjunction with the Forest Service, is developing a comprehensive social, economic, and land and resource plan. This effort will identify multiple opportunities for both the tribe and the Forest Service.
- The Santa Fe National Forest in the Southwestern Region provided its recreation planning skills to the Navajo Nation for recreation site development.
- The Cibola National Forest provided planning and forestry skills for the completion of a Navajo Nation Forest Management Plan.

Results: Cooperative Forestry provides leadership and technical and program assistance to activities that promote and serve—

- Sustainable ecosystems
- Vital communities
- Effective organizations
- Informed, involved publics
- Strong, effective partnerships
- Application of relevant technologies
- Efficient use of resources

Tribal governments or tribal members can participate in these programs to the benefit of the tribe, communities, and tribal members.

Additional Opportunities

The Forest Service can provide technical assistance or shared resources to work with tribes in the planning and development of tribal land and resource management programs. These actions may include training, transfer of technology, or cost-sharing projects and activities.

- Hiring tribal members or sharing staff positions with tribes to facilitate skills, knowledge, and information exchange, and appreciation of Forest Service/tribal opportunities for collaboration.
- Consulting with tribal governments on their research, cooperative forestry, and technical assistance needs and assets and gaining an understanding of their natural resource contributions.
- Developing youth programs such as youth practicums and other activities.
- Conducting joint training, information mailing lists, and information. The Forest Service's Eastern Region has provided NEPA training to tribes within the Great Lakes states.
- Contracting Forest Service activities or projects with tribal governments helps the tribes and the Forest Service meet mutual objectives.
- Establishing cost-share and participating agreements to develop, plan, and implement projects that benefit both the tribe and the Forest Service and improve Forest Service activities. Projects are financed with matching funds and in-kind services from cooperators and the Forest Service (see Interior and Related Agencies Appropriations Act of 1992 and P.L. 94–148 (16 USC 565a–1)).
- Collaborating with BIA and tribal governments. Under the Economy Act of June 30, 1932, the Forest Service can pass money through the BIA for tribal governments to work on projects that benefit both the tribe and the Forest Service.

There may be other opportunities for the Forest Service and tribal governments to work together. Consultation is critical to developing and using all the tools we need to fully realize our partnerships with tribes.

References

American Indian Lawyer Training Program, Inc. (AILTP) 1988. *Indian Tribes as Sovereign Governments.* AIRI Press. 156 pp.

Barnes, Mary Sheldon. 1896. *Studies in American History.* D.C. Heath & Co. Boston, MA, 433 pp.

Beckham, Stephen Dow. 1977. *The Indians of Western Oregon.* Argo Books, Coos Bay, OR, 236 pp.

Berger, Thomas R. 1985. *Village Journey: The Report of the Alaska Review Commission.* New York: Hill and Wang. pp. 48–72.

Bureau of the Census. 1990. *We, the First Americans.* Washington, DC: U.S. Department of Commerce. 28 pp.

Case, David S. 1984. *Alaska Natives and American Laws.* Fairbanks: University of Alaska Press. 586 pp.

Cohen, Felix S. 1945. *Handbook of Federal Indian Law.* USDI, Office of the Solicitor, U.S. Government Printing Office. 658 pp.

Department of the Interior, Office of American Indian Trust. 1991. *American Indians and Alaska Natives,* 20 pp.

Eggleston, Eugene E. 1990–1991. Personal Interview by Les McConnell of *Eugene E. Eggleston.* Range Conservationist, Bureau of Indian Affairs, Portland Area Office, 1990 and 1991.

Fenton, Robert. 1990–1991. Personal Interview by Les McConnell of *Robert Fenton.* Hydrologist, Bureau of Indian Affairs, Portland Area Office, 1990 and 1991.

Gibbs, George. 1863. *A Dictionary of the Chinook Jargon, or Trade Language of Oregon.* Smithsonian Institution. Washington, DC, 48 pp.

Getches, David H. and Charles F. Wilkinson. 1986. *Federal Indian Law, Cases and Materials.* Second Edition. West Publishing Co. St. Paul, MN, 880 pp.

Getches, David H., Charles F. Wilkinson, and Robert A. Williams, Jr., 1993. *Cases and Materials on Federal Indian Law.* Third Edition, West Publishing Co., St. Paul, MN, p. 8–22.

Holt, H. Barry, and Gary Forrester. 1990. *Digest of American Indian Law: Cases and Chronology.* Rothman and Company. Littleton, CO, 138 pp.

Jones, Richard S. 1981. *Analysis of American Indian Policy.* Washington, DC. Congressional Research Service, June 4, 1981.

Kappler, Charles J. 1972. *Indian Treaties 1778–1883.* Volume 2, reprinted in 1972, Amereon House. Mattituck, NY, 1,099 pp.

Lane, Barbara. 1973. *Political and Economic Aspects of Indian-White Culture in Western Washington in the Mid-19th Century.* Bureau of Indian Affairs Contract, Portland, OR, 545 pp.

O'Donnell, Terrance. 1991. *An Arrow in the Earth.* Oregon Historical Society, Portland, OR, 345 pp.

Office of American Indian Trust. *American Indians & Alaska Natives, Questions and Answers,* 1849 C Street N W, Room 2472, Washington, DC 20245. 8 pp.

Pacific Northwest Quarterly, Various articles; Volumes 51 through 80, 1960 to 1990, *Magazine of the Washington State Historical Society.* Tacoma, WA.

Pevar, Stephen L. 1992. *Rights of Indians and Tribes: Guide to Indian and Tribal Rights—An American Civil Liberties Union Handbook.* ACLU. Second edition. Carbondale and Edwardsville: Southern Illinois University Press. 335 pp.

Price, Robert E. 1982. *Legal Status of Alaska Natives: A Report to the Alaska Statehood Commission.* Anchorage, AK, 2,202 pp.

Price, Robert E. 1990. *The Great Father in Alaska: The Case of the Tlingit and Haida Salmon Fishery.* Douglas, AK: First Street Press.

Records of the Washington Superintendency, 1853–1874. Record Group M5, National Archives, Washington DC.

Records of the Oregon Superintendency, 1848–1873. Record Group M2, National Archives, Washington DC.

Russell, George 1992. *The American Indian Digest.*

Smith, Eric and Mary Kancewick. 1990. "The tribal status of Alaska Natives." *University of Colorado Law Review* 61:3:455–516.

State of Alaska. 1986. *Report of the Governor's Task Force on Federal-State-Tribal Relations.* Submitted to Governor Sheffield, Juneau.

Trope, Jack R. 1994. *Native America in the Twentieth Century—An Encyclopedia.* New York and London: Garland Publishing, Inc., pp. 564–565.

The United States Indian Service: A Sketch of the Development of the Bureau of Indian Affairs and of Indian Policy. With references to Felix S. Cohen, 1956. Bureau of Indian Affairs, Portland, OR, 32 pp.

United States v. *State of Michigan.* 471 F.Supp. 192 (1979).

United States v. *Oregon*. Civil No. 68–513, Final Opinion 1969.

United States v. *Washington*. 384 F. Supp 312, 1974, West Publishing Company.

USDA Forest Service. Region 6. 1991. *Desk Guide to Tribal Government Relations*. September 1991, Tribal Relations Advisory Group. Portland, OR, 57 pp.

Washburn, Wilcombe E. 1973. *The American Indian and the United States*. Smithsonian Institution. Greenwood Press Incorporated. Washington, DC, IV Volumes, 3,119 pp.

25 CFR Parts 83, 89, 163, 249, 261, and 271.

25 USC Sections 2, 9.

36 CFR, all sections applying to USDA Forest Service.

Appendix A: Authorities, Major Laws, and Regulations That Pertain to the Forest Service

Included in this appendix is general information about existing laws and court decisions. Several excerpts from Forest Service authorities are also listed to provide a point of reference to the reader.

Major Laws and Regulations

Pre-Constitutional

Before the U.S. Constitution, Indian Nations were treatied with (the act of signing treaties) most European countries, except England. The British Crown issued doctrines describing the relationship it held as being a political relationship with Indian Nations. The King of England further defined areas west of the Appalachians as Indian Territory. Indian tribes were recognized as sovereign nations.

Once lands Northwest of the Ohio River were opened for settlement, the Continental Congress passed the *Northwest Ordinance* (1 Stat 51, 1787) in part to have some representation of law and order, because settlers were sure to encounter Indian Nations occupying lands there.

The courts had established that "discovery" gave European colonial powers fee simple ownership of the domain they had "discovered," subject to the Indians' right of occupancy and use or "Indian title." This fee title passed to the United States on its independence from England, subject to treaty rights or conditions reserved by or for the Indians and by subsequent actions by Congress or the Executive to abrogate or condition treaties, laws, and agreements.

Aboriginal Rights

Aboriginal rights are based on aboriginal title, original title, or Indian title which is the possessory right to occupy and use the area of land that Indians have traditionally used. Congress could extinguish such rights or title at will through treaty or otherwise. Individual aboriginal rights were based on continuous actual possession by occupancy, enclosure, or other actions establishing a right to the land to the exclusion of adverse claimants. For national forest managed lands, such possession must have predated the establishment of the national forest.

Constitutional

As quoted in Felix S. Cohen's *Handbook on Federal Indian Law*, Chief Justice John Marshall observed in *Cherokee Nation* v. *Georgia* that "[t]he condition of the Indians in relation to the United States is perhaps unlike that of any other two peoples in existence. [T]he relation of the Indians to the United States is marked by peculiar and cardinal distinctions that exist no where else." The Federal-Tribal relationship is based upon broad, but not unlimited, Federal constitutional power over Indian affairs, often described as "plenary." The relationship includes a fiduciary trust to deal with Indian tribes.

The *Commerce Clause* is the Constitution's primary authority over Indian tribes. Under it, Congress is authorized to "regulate commerce with foreign Nations, and among the States, and with the Indian Tribes." Other constitutional powers were important in the early years such as the *Treaty Clause*. The courts have determined that these two clauses, along with the *Supremacy Clause*, are the primary basis for the U.S. Government's exclusive authority to provide for the Federal management of Indian matters. The specific clauses pertaining to Indians are—

Article I, Section 8, Clause 3. Power under Indian Commerce Clause is limited to Federally Recognized Tribes. Congress "shall have the power to regulate Commerce with...the Indian Tribes."

Article I and 14th Amendment. Indians are not taxed.

Article II, Section 2, Clause 2. The Treaty Clause: "...the President shall have the power to make treaties, provided two-thirds of the senators present concur..." This was the principle foundation for Federal power over Indians.

Article I, Section 8, Clauses 1,11,12,15–17. National defense powers of the Constitution provided for administration of Indian affairs at least during the first century of the U.S. Nation's existence. During this period Indian affairs were more of a military and foreign policy matter than a matter to be handled under domestic or municipal laws.

Article IV, Section 3, Clause 2. The *Property Clause*, has been considered as an additional source of authority over Indian affairs. The power over U.S. property is exclusively committed to Congress (see FSM 5501.1). Under this clause, executive order reservations have been sustained on the basis of Congress' longstanding acquiescence in the practice. An historical argument has been made that because technically lands held under "Indian title" were also "property of the U.S.," they were subject to the Property Clause.

The Property Clause provides: "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or Property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State."

Public lands owned by the United States are administered for public purposes by the Federal agencies under the Property Clause. These Federal lands are distinct from lands held by the United States in trust for the benefit of the American Indians.

Article VI, Clause 2. This is the clause confirming that States of the Union have no jurisdiction over Indian Nations or their treaties. "This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Laws and Treaties

Numerous laws, treaties, executive orders, cooperative agreements, and so forth provide assistance, give use rights, or define relationships between the Forest Service and American Indians and Alaska Natives.

Laws and Treaties Specific to Indians

Numerous Treaties. Beginning with a *Treaty with the Delawares* in 1778, the United States sought to maintain the peace, establish boundaries for protection of settlers and Indians, and acquire territory to be opened to settlement. Subsequent treaties beginning with the *Treaty with the Wyandots* (January 9, 1789, 7 Stat. 28) and others provided for certain rights, such as hunting, to be retained by the Indians.

Non-Intercourse Acts of 1790 and 1834. Gave the Federal Government authority over Indian matters and provided a base for U.S. Indian policy.

Treaty with France for Louisiana Purchase of 1803. The French ceded the Mississippi drainage to the United States bringing the territory and its inhabitants under U.S. rule and protection free from European intervention.

Indian Removal Act of 1830. Enabled the President to negotiate and remove tribes from east of the Mississippi to areas west of the Mississippi (Indian Territory—Oklahoma).

Treaty of Dancing Rabbit Creek 1830. Involved dissolution of tribal territory and assimilation into U.S. society.

Treaty with Great Britain added Oregon Territory in 1846. Ceded the Northwest Territory to the United States, bringing the area and its inhabitants under U.S. rule and protection free from European intervention. The Organic Act establishing the Oregon Territory reiterated within it Article the third from the Northwest Ordinance, which related to the settlement of lands where Indian people are still occupying said lands.

Treaty with Mexico 1848. Treaty with Mexico (also known as the Treaty of Guadelupe Hidalgo) ceded the southwest territory to the United States, bringing the area and its inhabitants under U.S. rule and protection free from European intervention.

Rider in Appropriation Act of 1871. Ended treaty era.

Major Crimes Act 1885. Extended criminal jurisdiction to Indian Country.

General Allotment Act 1887 (Dawes Act). Provided for the allotment of lands to Indians on various reservations and public domain and extended the protection of laws of the United States and territories over Indians. This was an attempt at assimilation by cessation of Indian tribal holdings and relations and by treating Indians as individuals by division of lands among them to establish homes, develop their lands, and become a part of American society. The act also offered U.S. citizenship to any individual applying for an allotment. This act resulted in the transfer of over 80 million acres (actual estimates of acreage transferred ranged from 50 to 134 million acres) of Indian lands into private ownership.

Court of Private Land Claims Act of 1891. Gave the Court of Private Land Claims jurisdiction over all Spanish or Mexican land grant claims in Colorado, Nevada, and Wyoming and all land claims in Arizona, New Mexico, and Utah.

Intercourse Act of 1892. This act prohibited the intrusion of non-Indians on Indian lands.

Alaska Native Allotment Act of 1906. Congress created procedures whereby individual Alaska Natives could acquire land. The act specifically provided that land acquired would be held in trust by the United States for the benefit of the individual Native owner. The Alaska Native Claims Settlement Act of 1971 (ANCSA) repealed this act.

Allotment Act of 1910 (Amended Dawes Act of 1887). Section 31 provided for allotting lands to Indians found to be occupying, living on, or having improvements on lands that had become National Forest lands.

The Indian Citizenship Act of 1924. Granted the status of citizenship to Indians, regardless of their land tenure or place of residence. Up until this time, the U.S. Constitution did not apply to individual Indians.

Pueblo Lands Board Act of 1924. Allowed non-Indians to validate title to previously acquired Pueblo lands.

Indian Reorganization Act of 1934. Allowed Indian Tribes to reorganize and adopt bylaws and so forth under the Secretary of the Interior, ended allotments in severalty, and gave the Secretary authority to acquire lands inside or outside of reservations to provide lands for Indians.

Indian Claims Commission Act of 1946. Established Indian Claims Commission (ICC) as an independent agency to hear and determine claims in law or equity arising under the Constitution, laws, treaties of the United States, all other claims in law or equity, and claims based upon honorable dealings that are not recognized by any existing rule of law or equity.

House Concurrent Resolution No. 108 of 1953. Articulated U.S. Government policy leading to Termination Acts. Between 1954 and 1967, 109 tribes and bands were terminated.

Indian Civil Rights Act of 1968. Defined Indian Tribes and their members as having the same civil rights as non-Indian citizens under the U.S. Constitution (P.L. 90–284).

General Laws

The following general laws will have a major effect on the interpretation and implementation of Forest Service policy:

The Forest Service Organic Act of 1897. This act provides that national forests shall be established only to improve and protect the forest therein, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for use and necessities of the citizens of the United States In addition, the Secretary of Agriculture may make rules and establish such service as will assure the objectives of the Forest

Reserves, namely, to regulate their occupancy and use and preserve the forest thereon from destruction.

The Weeks Law of 1911. Authorizes and directs the Secretary of Agriculture to acquire forested, cutover, and denuded lands within watersheds of navigable streams necessary to the regulation of the flow of navigable streams or for timber production. Under the act, such lands are to be permanently reserved, held, and administered as national forests.

Bankhead-Jones Act of 1937. Authorizes and directs the Secretary of Agriculture to develop a program of land conservation and utilization, to correct maladjustments in land use, thus controlling soil erosion, and reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreation facilities, mitigating floods, conserving surface and subsurface moisture, protecting watersheds of navigable streams, and protecting the public lands, public health, and welfare.

Sustained Yield Forest Management Act of 1944. Provides authority to the Secretary of Agriculture and the Secretary of the Interior to establish cooperative sustained yield units with private and other Federal agencies in order to provide for a continuous and ample supply of forest products and to secure the benefits of the forest in maintenance of water supply, regulation of stream flow, prevention of soil erosion, amelioration of climate, and preservation of wildlife. Under Section 7, trust or restricted Indian land, whether tribal or allotted, could be included in such a unit with the consent of the Indians concerned.

Multiple-Use Sustained-Yield Act of 1960. Confirms the policy of Congress that national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes. It authorizes and directs the Secretary of Agriculture to develop and administer the renewable resources for multiple use and sustained yield of the several services and products obtained therefrom. It authorizes the Secretary of Agriculture to cooperate with interested State and local governmental agencies and others in the development and management of the national forests.

Fish and Wildlife Conservation Act of 1960. Provides for Interior/Agriculture coordination in cooperation with States to develop, plan, maintain, and coordinate programs for the conservation and rehabilitation of wildlife, fish, and game including, but not limited to, specific habitat improvement projects and protection of threatened or endangered species.

National Environmental Policy Act (NEPA) of 1969 (P.L. 91–190). NEPA's implementing regulations require Federal agencies to invite Indian tribes to participate in the scoping process on projects and activities that affect them. Tribes with treaty rights on National Forest System lands may also meet with line officers in advance of the formal planning processes about their reserved rights.

Forest and Rangeland Renewable Resources Planning Act (RPA) of 1974. Directs and authorizes the Secretary of Agriculture to make an assessment of the renewable resources and to determine the ways and

means needed to balance the demand for and the supply of these renewable resources, benefits, and uses in meeting the needs of the people of the United States. Assures that national forest plans provide for multiple use and determine harvesting levels and availability and suitability for resource management. It also specifies procedures to insure that such plans are in accordance with NEPA requirements.

Federal Land Policy and Management Act (FLPMA) of 1976. Directs the Secretary of Agriculture to coordinate National Forest System land use plans with the land use planning and management programs of and for Indian tribes by considering the policies of approved tribal land resource management programs. Parts of sections on range management and minerals on surface rights also apply to National Forest System lands.

National Forest Management Act (NFMA) of 1976. Directs consultation and coordination of National Forest System planning with Indian tribes.

National Indian Forest Resource Management Act (PL 101–630). Provides for the management of forested tribal trust lands.

Alaska Native Claims Settlement Act (ANCSA) of 1971 (PL 92–203). Provides settlement of Alaska Native land claims and provides specific Federal benefits and services for those lands and for the development of Native corporations.

Alaska National Interest Lands Conservation Act (ANILCA) of 1980 (P.L. 96–487, 16 U.S.C. 18f). Recognizes subsistence hunting and fishing rights. Recognizes conservation units and protection of lands and waters and so forth.

Specific Indian Occupancy and Use Laws

In addition to the general laws, such as the Forest Service Organic Act of 1897, the following laws have application under specific circumstances on Federal lands and will have a major effect on the interpretation and implementation of Forest Service policy.

Antiquities Act of 1906 (P.L. 209), as amended. Provided penalties for the illegal removal, disturbance, or destruction of any object of antiquity on Federal lands. Required permits for examination, excavation, or gathering of objects of antiquity on Federal lands. Authorized the President to designate national monuments to protect historic and prehistoric structures and other objects of historic or scientific interest.

Indian Reorganization Act of 1934 (IRA) (25 U.S.C. 461 et seq.). Its primary thrust was to establish tribal governments with whom Congress and the Department of the Interior could conduct governmental business and other provisions directed toward improving the lot of Indians.

National Historic Preservation Act of 1966 (NHPA) (P.L. 89–665, as amended, P.L. 91–423, P.L. 94–422, P.L. 94–458 and P.L. 96–515). NHPA states that "the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people." The 1992 amendments

to NHPA strengthen requirements for cooperation between Federal agencies and American Indian tribes and Native Hawaiian Organizations.

Alaska Native Claims Settlement Act of 1971 (ANCSA) (P.L. 92–203). Provided settlement of Alaska Native land claims and provided specific Federal benefits and services for those lands and Native corporations.

Endangered Species Act of 1973 (P.L. 93–205, as amended by (P.L. 94–325, P.L. 94–359).

Archeological and Historic Preservation Act of 1974 (P.L. 93–291).

Indian Self Determination and Education Assistance Act of 1975 (P.L. 93–638). Encouraged tribes to assume responsibility for Federally funded programs designed for their benefit that had previously been administered by the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS).

The American Indian Religious Freedom Act of 1978 (AIRFA) (P.L. 95–341). The policy of the United States is to protect and preserve religious rights, practices, and beliefs of the American Indian, Eskimo, Aleut, and Native Hawaiian. This includes, but is not limited to: access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites.

The Archeological Resources Protection Act of 1979 (ARPA) (P.L. 96–95). Establishes a permit process for the management of cultural sites on Federal lands which provides for consultation with affected tribal governments.

Alaska National Interest Lands Conservation Act of 1980 (ANILCA) (P.L. 96–487, 16 U.S.C. 18f). Among other things, recognizes subsistence fishing and hunting.

Management of Museum Properties (18 U.S.C. 1163).

Embezzlement and Theft from Indian Tribal Organizations (25 CFR Indians).

E.O. 11593—Protection and Enhancement of the Cultural Environment (1971).

Native American Grave Protection and Repatriation Act (NAGPRA) (P.L. 101–601, 25 U.S.C. 3001–3013). Addresses the rights of lineal descendants and members of Indian tribes, Alaska Native and native Hawaiian organizations to retain certain human remains and precisely defined cultural items. It covers items currently in Federal repositories as well as future discoveries.

Policy Statements Compared With Statutes

The United States Constitution, Article I, Section 8, includes a clause commonly referred to as the *Commerce Clause: "Congress shall regulate commerce with...the Indian Tribes..."* It further states, in Article VI, that judges in every State shall be bound to the laws of the United States. The sovereign status of Indian Nations has been addressed consistently over time:

The Trade and Intercourse Act of 1790, (1 Stat. 137), established a fiduciary relationship between Indians and the U.S. Government. In 1814, 25 years after the Constitution was ratified, and in order to bring the War of 1812 with Great Britain to a close, the United States signed the *Treaty of Ghent.* This was the first document establishing that the Federal Government would act as a guardian for Indian Nations and their lands. Great Britain insisted that its provisions include the return of lands taken from Indian tribes by the United States before 1812 (the former Northwest Territory).

By 1831, Chief Justice Marshall in his Supreme Court opinion reaffirmed the guardian/ward relationship that the U.S. Government has toward Indians. This was reiterated by the Supreme Court in *U.S.* v. *Kagama*—1886: "Indian Tribes are wards of the Nation." In 1832, Congress authorized three items:

- The Presidential appointment of a Commissioner of Indian Affairs within the Department of the Interior.
- Delegations of authority for the Secretary of the Interior.
- Authorized the President to prescribe regulations pertaining to Indians (25 U.S.C., Sec. 1, 2, and 9). The authority of the President to make executive regulations is subject to the implied condition that they be consistent with the statutes enacted by Congress and in execution of and supplementary thereto (*Romero* v. *U.S.*—1889, 24 Ct Cl. 331).

No statute, law, or court decision to date has affected or altered the above assigned trust responsibility or related principles. Even the recent "Self-Governance Compacts" negotiated between the Secretary of the Interior and Indian tribes do not change the statutory duties delegated by Congress. In these compacts, the trust responsibility associated with individual Indian trust lands has been specifically reserved by the Secretary of the Interior.

Presidential Indian policy provides guidance in working with Indian tribes. Any divergence from the longstanding and pervasive role of the Secretary of the Interior would be inconsistent with Federal statutes, tribal sovereignty, and the guardian-ward relationship the United States has with Indian Nations.

Excerpts from the Forest Service Manual and Litigation

FSM 5550.15 — *Judicial Interpretations.* The courts have issued decisions and final judgments that interpret treaties, statutes, laws, rules, and regulations as to the extent of Indian rights and interests including those rights reserved by or for Indian tribes in treaties with the U.S.:

Interpretation of Reserved Rights Language Where Ambiguities Exist:

Worcester v. *Georgia (1832).* "...the language used in treaties with the Indians should never be construed to their prejudice."

Choctaw Nation v. *Oklahoma (1970).* Because treaties were imposed on the Indians, "treaties with the Indians must be interpreted as they would have understood them...and any doubtful expressions in them should be resolved in the Indians' favor."

Oliphant v. *Suquamish Indian Tribe (1978).* Indian treaties "cannot be interpreted in isolation but must be read in light of the common notions of the day and the assumptions of those who drafted them."

Washington v. *Washington State Commercial Passenger Fishing Vessel Association (1979).* The treaty words must be construed "in the sense in which they would naturally be understood by Indians."

Nature of Tribal Powers

Worcester v. *Georgia (1832).* Indian tribes are "distinct, independent political communities" with powers of self government that exist by reason of their original tribal sovereignty.

Whitefoot v. *United States (1962) and United States v. Washington (1975).* Treaty rights are reserved to or by the tribe not to the individual; they are tribal rights regulated by tribal government actions.

United States v. *Wheeler (1978).* Realty management activities, land exchange, occupancy and use, title claims and so forth, must be carried out with the tribal government level.

U.S. v. *White Mountain Apache Tribe (9th Cir. 1986).* "Tribal sovereignty cannot prevent the Federal Government from exercising its superior sovereign powers."

Nature of Treaty Rights Affecting National Forest System Lands

Worcester v. *Georgia (1832).* Since statutory direction is limited, use the Court interpretations when dealing with the exercise of treaty rights affecting or affected by realty management activities.

U.S. v. *Dion (1985).* Treaty rights may be abrogated by Congress only through clear explicit language. (Abrogation of treaty rights cannot be affected by realty management activities, they must rely on Court interpretation or explicit Congressional direction).

Lac Courte Oreilles Band of Chippewa Indians v. *Wisconsin (1990).* Treaties reserve a tribal usufructuary right or right of occupancy and use on the ceded lands, also the right to gather miscellaneous forest products on State public land.

United States v. *Winans (1905).* The court held that:

- Non-Indians may not prevent treaty American Indians access to fishing sites open to the general public on ceded lands.
- American Indians reserve rights by treaty. The United States does not grant treaty rights.
- The off-reservation right constitutes a servitude or easement over land to access such sites regardless of land ownership.

Seufert Brothers v. *United States (249 U.S. 194, 1919).* The United States Supreme Court determined that the Indians signing the Yakima Treaty would have understood their reserved fishing rights to extend to all their traditional fishing areas, without regard to ceded land boundaries.

Tee-Hit-Ton Indians v. *United States (1955).* The court held that aboriginal or original Indian title is not a property right, but is a right of occupancy which the Sovereign grants and protects against intrusion by third parties. This right of occupancy may be terminated and lands fully disposed of by the Sovereign itself without any legally enforceable obligation to compensate the Indians.

Lyng v. *Northwest Indian Cemetery Protective Association (1988).* The court ruled, regarding a proposed road construction project that could lead to infringement on Indian rights to exercise their religion, that "...there is no violation of the free exercise of religion clause because the affected individuals will not be coerced by governmental action into violating their religious beliefs, nor will the Government action penalize religious activity."

United States v. *Dann (1989).* The court ruled that:

- Only Congress can extinguish aboriginal title;
- Individual American Indian grazing rights were retracted to those exercised before their withdrawal from public lands; and
- Treaty rights, when shared with others, are subject to reasonable regulations.

Water Rights

Winters v. *United States (1908).* The court ruled that the United States could reserve water rights from the State of Montana for tribes. The *reserved water right as applied to Indians* is derived from *Winters* v. *U.S., 1908.* This landmark Supreme Court case held that *"sufficient water was implicitly reserved to fulfill the purposes for which the reservation was established."* This "Doctrine of Federal Reserved Rights" established a vested right (a right so completely settled that it is not subject to be defeated or cancelled), whether or not the resource was actually put to use, and enabled the tribe to expand its water use over time in response to changing reservation needs. The quantity of water was determined by evaluating the purposes for which the Indian reservation was established and applied to all uses—including irrigation of lands that were not currently serviced with a water supply. This analysis includes information about current and planned (future) reservation uses such as municipal, industrial, and natural resources. The Winters Doctrine provides that tribes have senior water rights and the national forests have junior rights. Some recent court decisions have given Indian reservations priority water rights on Federal lands, including national forests.

United States v. *Adair (723 F.2nd 1394 9th Cir. cert denied 467 U.S. 1252—1984).* The Ninth Circuit has held that the tribe has an implied water right with a priority date of time immemorial, to as much water on the former reservation lands as they need to support their hunting and fishing rights. "...The Government and the tribe intended to reserve a quantity of water...not only for the purposes of agriculture, but also for the purpose of maintaining the tribe's right to hunt and fish or reservation lands."

Menominee v. *United States (1968).* The court said that the Termination Act did not deprive tribes of hunting and fishing rights on reservation lands.

Kimball v. *Callahan (1974).* The court said that treaty rights to hunt, trap, and fish are permitted on former Indian Reservation land, including lands taken for National Forest and privately owned land open to those uses; for example, such rights that survived the Termination Act.

United States v. *Gemill (1976).* The court found that aboriginal American Indian land rights, which no treaty, agreement, or statute had specifically recognized, were extinguished when those lands were included within a National Forest.

Oregon Department of Fish and Wildlife v. *Klamath Indian Tribe, 473 U.S. 753 (1985).* "A 1901 agreement accomplished diminution of the reservation, no language evidences any intent to preserve special off-reservation hunting or fishing rights for the Tribe" (including lands that are now NFS Lands).

TITLE 1500 - EXTERNAL RELATIONS
WO AMENDMENT 1500-90-1
EFFECTIVE 6/1/90

1563 - TRIBAL GOVERNMENTS

1563.01 - Authority. Numerous laws related to the recognition of American Indian and Alaska Native Governments, hereinafter referred to as Native Americans, and spell out specific rights enjoyed by them. Of specific interest are the following:

1. Alaska National Interest Land Conservation Act of 1980. Subsistence hunting and fishing rights are recognized.

2. President's Federal Indian Policy, January 24, 1983. Supports the primary role of Tribal Governments in matters affecting American Indian Reservations. This policy stresses that the Federal Government will pursue the principle of Indian self-government, and that it will work directly with Tribal Governments on a government-to-government basis.

3. USDI/USDA Agreement in Principle, January 13, 1988. Recognizes that the two agencies have a common objective of helping to promote the highest and best use of Native American lands. This agreement is a foundation for the Departments' endeavors in promoting the objectives of meeting the needs of American Indians.

4. American Indian Religious Freedom Act of 1978. The policy of the United States is to protect and preserve religious rights, practices and beliefs of the American Indian, Eskimo, Aleut and Native Hawaiian. This includes, but is not limited to, access to sites, use and possession of sacred objects, and freedom to worship through ceremonial and traditional rites.

5. Alaska Native Claims Settlement Act of 1971. Provided settlement of Alaska Native land claims and provided specific Federal benefits and services for those lands and Native corporations.

6. National Forest Management Act of 1976. Directs consultation and coordination of planning with Indian tribes.

7. The Archeological Resource Protection Act of 1980. Establishes a permit process for the management of cultural sites on Federal lands which provides for consultation with affected Tribal Governments.

1563.02 - Objective. Heighten sensitivity and awareness of our employees, and establish mutual and beneficial partnerships.

1563.03 - Policy. In carrying out the unique relationship and obligation the United States Government has with Indian Tribal Governments and similar legally defined relations with Alaska Native Corporations, the Forest Service policy shall be to:

1. Maintain a governmental relationship with Federally Recognized Tribal Governments.

2. Implement our programs and activities honoring Indian treaty rights and fulfill legally mandated trust responsibilities to the extent they are determined applicable to National Forest System lands.

3. Administer programs and activities to address and be sensitive to traditional Native religious beliefs and practices.

4. Provide research, transfer of technology, and technical assistance to Tribal Governments.

1563.04 - Responsibilities

1563.04a - Deputy Chief, State and Private Forestry. The Deputy Chief, State and Private Forestry, carries out the American Indian and Alaska Native program service-wide and in the Washington Office.

1563.04b - Regional Foresters, Station Directors, and Area Director. Regional Foresters, Station Directors, and Area Directors are responsible for establishing and implementing an effective American Indian and Alaska Native program.

1563.04c - Line and Staff. Line and Staff at all organizational levels are responsible for implementing a comprehensive American Indian and Alaska Native program.

1563.05 - Definitions

1. Federally Recognized Tribes means an Indian group for which: (1) Congress or an Executive Order created a reservation for the group either by treaty (before 1871), statutorily expressed, agreement by Executive Order, or other valid administrative action; and (2) the United States has some continuing political relationship with the group, such as providing services through the Bureau of Indian Affairs.

2. Treaty means a legally binding agreement between the United States Government and a Tribe, or the Tribe's legal successors.

3. Tribe means any Alaska Native corporation or group, Indian Tribe, Band, Nation, Pueblo, Community, Rancheria, Colony, or Group recognized in statutes or treaties by the Federal Government.

4. Trust Responsibility means the permanent fiduciary relationship and obligation of the United States Government to exercise statutory and other legal authorities to protect Indian rights. As applied to the Forest Service activities, the trust responsibilities are defined primarily by the authorities listed in part 1563.01, and by treaties which may have application to specific areas of the National Forest System. Treaty rights on National Forest System lands are interpreted and applied by the Court.

1563.06 - Relationship to Other Programs

The Native American Program differs from Civil Rights Special Emphasis Programs because of the governmental nature of the Native Americans and Alaska Natives. However, the goals of the Special Emphasis Program (FSM) 1761.3)) are applicable to carrying out an effective Native American Program.

The Indian Civil Rights Act of 1968
(25 U.S.C. SS 1301-03)

S 1301 Definitions
For purposes of this subchapter, the term -

(1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;
(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and
(3) "Indian court" means any Indian tribal court or court of Indian offenses.

S 1302 Constitutional Rights
No Indian tribe in exercising powers of self-government shall -

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people to peaceably assemble and to petition for a redress of grievances;
(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
(3) subject any person for the same offense to be twice put in jeopardy;
(4) compel any person in any criminal case to be a witness against himself;
(5) take any private property for a public use without just compensation;
(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year or a fine of S5,000, or both;
(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
(9) pass any bill of attainder or ex post facto law; or
(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

S 1303 Habeas corpus
The privilege of the writ of habeas corpus shall be available to any person, in court of the United States, to test the legality of his detention by order of an Indian tribe.

United States Department of Agriculture	**Forest Service**	**Washington Office**	**14th & Independence SW P.O. Box 96090 Washington, DC 20090-6090**

Reply to: 2360 **Date:** September 6, 1991

Subject: National Register Bulletin 38

To: Regional Foresters

From time to time, the National Register of Historic Places (NRHP) publishes technical guidance on the identification and assessment of properties that may be eligible for listing on the National Register. This information is useful in assisting the Forest Service and other federal agencies in their mission of identifying and nominating eligible properties to the National Register. This technical guidance is supplemental to the primary statutory and regulatory direction provided by the National Historic Preservation Act (NHPA) and its implementing regulations. It neither amends nor supersedes any regulatory direction previously provided.

One recent technical guidance document, Bulletin 38, "Guidelines For Evaluating and Documenting Traditional Cultural Properties," seems to involve agency cultural resource responsibilities under several statutes. However, it is important to understand and maintain the distinction among agency responsibilities under the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and the American Indian Religious Freedom Act (AIRFA) when following the guidelines of Bulletin 38. For this reason, we are enclosing detailed information on these distinctions and the role Bulletin 38 will play in the management of the National Forest System.

Bulletin 38 does not change the way we manage cultural resources. It does not alter our responsibilities under NHPA. It does not alter the definition of a cultural property. It does not impose new consultation requirements.

The Forest Service will use Bulletin 38 as guidance for NHPA Section 106 consideration of National Register properties which may contain traditional cultural significance. It will be applied in accordance with the guidelines in the enclosed.

/s/ Larry Henson for

F. DALE ROBERTSON
Chief

Cultural Resource Management

Bulletin 38:

Evaluating and Documenting Traditional Cultural Properties

National Register Bulletin 38, "Guidelines For Evaluating and Documenting Traditional Cultural Properties," seems to involve agency cultural resource responsibilities under several statutes. It is important to understand and maintain the distinction among agency responsibilities under the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and the American Indian Religious Freedom Act (AIRFA) when following the guidelines of Bulletin 38. Failure to do so may result in inappropriate environmental and cultural evaluations and undue difficulties and delays in implementing management decisions.

NEPA requires Federal agencies to consider the effects of their decisions upon a broad range of resources. Forest Service NEPA procedures at FSH 1950 describe the initial NEPA review process for a project as including "scoping." However, there is a distinction between the legal requirements for scoping as established by the Council on Environmental Quality's NEPA regulations, and the "scoping" process more broadly applied by the agency. The scoping provisions at 40 CFR 1501.7 apply only when an EIS is involved; the scoping provisions at FSH 1950, Chapter 10, exceed the regulatory requirements by considering scoping as the review mechanism used early in a project to help decide the nature and depth of environmental analysis that will be necessary. This initial NEPA review process should include the contacting of concerned publics, including American Indians and other cultural or ethnic groups who might be interested in the proposed project. Such contact should reveal any concerns among those groups regarding traditional or cultural values that might be associated with the project area. If an EIS will be prepared, 40 CFR 1501.7(a)(1) requires, as part of scoping, that the agency, "invite the participation of...any affected Indian tribe..." Several other sections of the CEQ regulations require attention to Indian concerns: 40 CFR 1503.1(a)(2)(ii), inviting comments from Indian tribes; 40 CFR 1506.6(b)(3)(ii), requiring public involvement measures to include notice to Indian tribes; and 40 CFR 1508.5, concerning Indian tribes as cooperating agencies.

The NEPA regulations treat cultural resources at separate sections from those parts describing obligations towards Indians, whereas Bulletin 38 creates a direct link between the ethnic/cultural attributes and associations of a property and its consequent qualification for consideration as historic under NHPA. For example, 40 CFR 1502.16(g) lists "historic and cultural resources" among the elements to be discussed in terms of environmental consequences in an EIS. 40 CFR 1502.25(a) requires integration of the draft environmental impact statement preparation with "related surveys and studies required by the . . . National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.). . ." and 40 CFR 1508.27(b)(8), in explaining the term "significantly" in the NEPA context, discusses "intensity" by listing a range of factors, including: "the degree to which the action may adversely affect district, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources." Treatment of cultural resources in the course of NEPA compliance may indicate the need for ethnographic surveys to supplement the standard cultural resource survey.

Such subsequent surveys could then trigger a need for further measures to comply with NHPA and/or AIRFA. The NHPA pertains only to tangible properties (buildings, structures, sites, or objects) which are important in history (have chronological persistence). NHPA requires us to consider the effects of our undertakings on properties eligible for or listed in the National Register of Historic Places by following the regulatory process specified at 36 CFR 800.

The American Indian Religious Freedom Act (AIRFA) states that:

"...it shall be the policy of the United States to protect and preserve for American Indians their inherent right for freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites" (42 USC 1966).

AIRFA imposes a duty upon Federal agencies to evaluate their policies and procedures with the aim of protecting Indian religious freedoms. The Courts have declared that AIRFA does not: a) require Federal agencies to consult with Indian spiritual leaders before making decisions; b) confer a "cause of action" but merely states Federal policy; and c) create any judicially enforceable rights (See Lockhart v. Robertson, 927 F.2d 1028 [8TH CIR,(S.D.], decided March 7, 1991, quoting from Lyng v. Northwest Indian Cemetery Protective Ass'n (108 S.CT. 1319 [1988].) Agencies need to make a good faith effort to learn about Indian religious practices and consider any adverse impacts on them in their decisionmaking practices. The consideration of intangible, religious, ceremonial, or traditional cultural values and concerns which cannot be tied to specific cultural properties could be done under the auspices of AIRFA but would not be appropriate as part of the NHPA Section 106 consultation and compliance process.

A property may be eligible to the NRHP and may have traditional values associated with it, but traditional values do not make an area eligible unless they are directly associated with a historic property. As Bulletin 38 points out, "the National Register is not the appropriate vehicle for recognizing cultural values that are purely intangible, nor is there legal authority to address them under Section 106 of the NHPA unless they are somehow related to a historic property."

Bulletin 38 does not change the way we manage cultural resources. It does not alter our responsibilities under NHPA. It does not alter the definition of a cultural property. It does not impose new consultation requirements.

The Forest Service will use Bulletin 38 as guidance for National Historic Preservation Act Section 106 consideration of National Register properties which may contain traditional cultural significance. The Bulletin defines such significance on page 1, as being "derived from the role the property plays in a community's historically rooted beliefs, customs, and practices." Recognizing these traditional cultural values and documenting the types of properties with which they are associated involves an expansion of traditional archaeological and historical techniques to include methods more common to ethnographers, ethnohistorians, and oral historians. This is not a new requirement. We have been identifying and evaluating traditional sites for years. Bulletin 38 should serve as a reminder of our commitment to consider broad definitions of historic values and not focus only on significance as determined by a single class or segment of the public.

Since this consideration of traditional values is provided under Section 106 of the NHPA and implementing regulations at 36 CFR 800 and 36 CFR 60 (USDI Bulletin 38, pages 1-3), a property with traditional cultural values must meet the basic criteria of applicability established by 36 CFR 60. Thus, in order to be considered under the provision of Section 106 of NHPA, a property must meet the following criteria considerations:

1. The property must be tangible and discrete, as defined under 36 CFR 60.4.

2. The property must have clearly definable physical boundaries and attributes which can be documented historically.

3. Designation of large land areas as potential National Register nominations is warranted only when such areas contain multiple properties definable as an historic district by theme group or cultural significance.

4. The traditional values attributed to the property must have a documentable history of at least 50 years.

5. The property must be traditional and of integral importance to the ethnic group or Indian tribe.

6. The property's significance must be established through multiple lines of documentation (e.g., archaeology, history, oral tradition, ethnography, or ethnohistory) or a preponderance of evidence in any one of these fields.

If a property or area being considered for treatment under the provisions of the National Historic Preservation Act does not meet all these criteria, the Section 106 provisions do not apply. The concerns expressed for designation may be very real and very important, but consideration of any traditional cultural values associated with the area might properly occur under some other mechanism or process, such as NEPA or AIRFA.

F. DALE ROBERTSON
Chief

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release May 24, 1996

EXECUTIVE ORDER 13007

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. Accommodation of Sacred Sites. (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions: (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454 (108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe; and

(iii) "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Sec. 2. Procedures. (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedures Act (5 U.S.C.551(13).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies officers, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,
May 24, 1996.

United States Department of Agriculture	**Forest Service**	**Washington Office**	**14th & Independence SW P.O. Box 96090 Washington, DC 20090-6090**

File Code: 1620/1300
Route To: 1000/1600

Date: October 2, 1995

Subject: Recent Federal Advisory Committee Act Interpretations

To: All Employees

The Forest Service has a long-standing tradition of providing opportunities for State, local, tribal, and private stakeholders to share with us their values and opinions. Efforts to inform and involve the public have yielded substantial benefits for everyone involved. However, employees and members of the public continue to raise questions about the applicability of the Federal Advisory Committee Act (FACA) to external relations.

Recently, we have been meeting with the USDA Office of the General Counsel, USDA Office of White House Liaison, General Services Administration, and Department of Justice to make sure we are in compliance with FACA while being responsive to our stakeholders. In light of these discussions, I have decided to update my policy letters of July 12, 1994, and January 17, 1995. This letter replaces my two previous letters. However, the public participation principles described in the July 12, 1994, letter hold. We can do no less to keep the best external relations possible. For ease of reference, I reiterate them here:

Make It Timely. The process allows enough time for the public to participate fully, with enough advance notice for all activities and crucial points in the process.

Make Your Process "Free." The public is able to participate at minimum cost and commitment of time, while meeting your public involvement objectives.

Emphasize Fairness. Participants agree that the process is fair, that all views offered are considered.

Practice Openness. Dialogue is welcomed and facilitated among all interests. Anyone who wishes to participate can. Information to the public (documents, etc.) is accessible to all and is in language that people can understand.

Make Involvement Early and Continuous. The public is involved from beginning to end, and relationships are built over the long term.

Make It Tangible. Results of the public's input are clearly demonstrated, and the public understands how public involvement affected the decision or outcome.

To help clarify if FACA applies to meetings with outside groups, I offer these general guidelines:

Meetings With State, Local, and Tribal Elected Officials—Under Section 204 of the Unfunded Mandates Reform Act (Public Law 104-4), meetings among Forest Service personnel and elected officials of State, local, or tribal governments, or their designees, are not subject to FACA. Such meetings can be held to obtain consensus advice relative to the implementation of Federal programs, or simply for exchanging information. Section 204 is currently in effect.

Groups Not Controlled by the Federal Government—FACA does not apply to groups established, organized, and managed by entities outside the Federal Government. Examples include businesses, environmental organizations, trade or industry associations, and citizens' groups. You may meet with such groups to hear their opinions, views, and advice; however, no group can become a preferred source of advice for the agency without sparking FACA concerns. Remember, too, that public perception is everything. If people observe you holding repeated private meetings with the same group, they may feel excluded and assume that FACA committee-formation requirements are being violated. If you become aware of members of the public having such feelings, find a way to include those citizens. Every interested party that wishes to be heard, should be heard. Not only will you then receive a broader range of views and opinions, you will minimize any perception of bias or unfairness in your decisionmaking. (See also Enclosure 1.)

Make sure there is sufficient separation between the Federal Government and outside groups. The Federal Government cannot control the group, its organization, or its operations, nor can the Federal Government have someone else establish a group for it. Federal control would be inferred if the Federal Government funds, selects members, or sets the agenda of the group. Federal control could also be inferred if the Federal Government indirectly funds, selects members, or sets the agenda of a group.

Federal employees may attend meetings of groups not controlled by the Federal Government and represent the Forest Service at such meetings, as long as the Federal employees are not in a position to determine, directly or indirectly, the group's activities, and their participation does not create a conflict of interest or violate any other principle of ethical conduct as codified in the Department of Agriculture "Employee Responsibility and Conduct Handbook." However, do not let any group become a preferred source for advice. Remember to practice the public participation principles presented on the previous page.

Groups Controlled Even in Part by the Federal Government—If the Federal Government organizes or controls even in part a group containing private citizens or organizations, there is a high probability that it violates the committee-formation requirements of FACA. Examples of groups not covered by FACA are included in Enclosure 1. The two exemptions most commonly found in the Forest Service are: 1) meetings we hold to obtain the advice from individuals

rather than consensus advice or recommendations from groups, and 2) meetings or committees whose function is not advice-giving. Here is further elaboration:

Group is set up to provide advice—If Federal employees seek advice from a group, then that advice must be obtained on an individual basis without group deliberation. Yet, if you are at a meeting and the group chooses to offer consensus advice:

Explain to the group that you convened them to hear individual advice, not a group consensus.

Explain that group advice could prove to be a problem because they are not a chartered advisory group. And if you were to accept their consensus advice, it could be challenged in court and the Forest Service could be enjoined from using the advice—something no one wants.

There are occasions when, in fact, what you need is an advisory committee. While Executive Order 12838 limits the number of advisory committees the Department may charter, it does not eliminate them completely. Forward requests for new advisory committees to the Public Affairs Office for review. Any legitimate request will be forwarded to the Secretary and GSA for action.

The best way to address concerns about the committee-formation requirements of FACA is to practice good public involvement. Even if you are confident that FACA does not apply, if you are seeking public opinions that will influence your decisions, be sure that it is sought in the most public manner possible and made available to the public as a matter of public record.

We will continue to provide you with updated information regarding compliance with FACA. I believe we are making progress in removing real and perceived barriers to working with our intergovernmental and public partners while complying with the law.

/s/ Joan M. Comanor for

JACK WARD THOMAS
Chief

Enclosure

ENCLOSURE 1

The Code of Federal Regulations addresses FACA in 41 CFR 101. Section 101-6.1004 lists examples of meetings or groups not covered by FACA. Here are the exemptions that would apply most commonly to the Forest Service:

(a) Any committee composed wholly of full-time officers or employees of the Federal Government;

(f) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies;

(g) Any committee which is established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically provided by law, such as making or implementing Government decisions or policy. An operational committee may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether such a committee is primarily operational. If so, it would not fall under the requirements of the Act and this subpart, but would continue to be regulated under relevant laws, subject to the direction of the President and the review of the appropriate legislative committees;

(h) Any meeting initiated by the President or one or more Federal official(s) for the purpose of obtaining advice or recommendations from one individual;

(I) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations. However, agencies should be aware that such a group would be covered by the Act when an agency accepts the group's deliberations as a source of consensus advice or recommendations;

(j) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's views, provided that the President or Federal official(s) does not use the group recurrently as a preferred source of advice or recommendations;

(l) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information.

This appeared in the Federal Register October 24, 1996.

104TH CONGRESS
1ST SESSION

H. R. 742

To amend the Federal Advisory Committee Act to limit the application of that Act to meetings between Federal officers or employees and representatives of State, county, and local governments and Indian tribes, and to limit the application of that Act to activities of the Department of the Interior related to consultations of the Department with Indian tribal organizations with respect to the management of funds held in trust by the United States for Indian tribes.

==========

IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 1995

Mr. DICKS introduced the following bill; which was referred to the Committee on Government Reform and Oversight

==========

A BILL

To amend the Federal Advisory Committee Act to limit the application of that Act to meetings between Federal officers or employees and representatives of State, county, and local governments and Indian tribes, and to limit the application of that Act to activities of the Department of the Interior related to consultations of the Department with Indian tribal organizations with respect to the management of funds held in trust by the United States for Indian tribes.

//Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,\\

!!SECTION 1. LIMITATION ON APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT TO CERTAIN MEETINGS AND CONSULTATIONS.!!

Section 4 of the Federal Advisory Committee Act (5 U.S.C. App.) is amended—
(1) in subsection (c) by inserting before the period the following: "or to any meeting between a full-time officer or employee of the Federal Government and one or more representatives of any combination of one or more State, county, or local governments or Indian tribes"; and
(2) by adding at the end the following:

"(d) This Act does not apply to any activity of the Department of the Interior related to consultation of the Department with an Indian tribal organization with respect to the management of funds held in trust by the United States for an Indian tribe."

Appendix B: Definitions

Aboriginal Areas. This term is used today to describe the historic and prehistoric lands where a tribe(s) carried out food gathering or seasonal activities or traded with other Indian peoples. These areas may be extensive depending on the geographic terrain.

Aboriginal Rights. Aboriginal rights are based on aboriginal title, original title, or Indian title, which is the possessory right to occupy and use the area of land that Indians have traditionally used. Congress could extinguish such rights or title at will through treaty or otherwise. Individual aboriginal rights were based on continuous actual possession by occupancy, enclosure, or other actions establishing a right to the land to the exclusion of adverse claimants. For national forest managed lands such possession must have predated the establishment of the National Forest.

Aboriginal Title (original or Indian title). The limited possessory right to occupy and use the lands Indians traditionally used and governed before non-Indian settlement. Under the Fifth Amendment of the Constitution, these rights are extinguishable without compensation.

Allotted Lands—On Reservation. *The Dawes Act, or General Allotment Act,* (1887) provided for dividing reservations into separate parcels to encourage individual Indians in agricultural pursuits. Parcels were 160 acres for each family or 80 acres per single person. Any remaining acres over the population allocation were deemed "surplus" and opened up for settlement by non-Indians. Under the Act, Indian-held lands declined from 138 million acres in 1887 to 48 million acres in 1934. In 1934, the Dawes Act was superseded by the Indian Reorganization Act.

Allotted Lands—Off Reservation (public domain allotments). These public domain lands were set aside to fulfill a need to maintain recognition of a specific group of Indian people. These are sometimes called "Public Domain Allotments." Nearly all these acres are held in trust status by the Department of the Interior (DOI), and administered by the Bureau of Indian Affairs (BIA).

Ceded Lands. This term was first used in the *Treaty with the Wyandot, 1789.* Since that time, many treaties have referred to land cessions made by tribes to the United States. Most Federal agencies and Indian tribes prefer to use the term "ceded lands" when describing areas where a tribe did... "cede, relinquish, and convey to the U.S. all their right, title, and interest in the lands and country occupied by them"...at treaty signing or when reservations were established. Ceded land references are qualified by the legal definition of original tribal occupancy issued in 1978 by the U.S. Court of Claims. In effect: "only lands actually owned by a tribe can be ceded to the

U.S." This term is used interchangeably with "treaty boundary" described elsewhere in the definitions.

Confederated Tribe. A body of separate and different tribes who operate under one form of tribal government upon a reservation or Indian trust land.

Consumptive Water Uses/Rights. Ground or surface water which is diverted from its source and used for an activity and is not directly put back into the aquifer or stream; used without returning it to a stream or well.

Federal Recognition. Acknowledgment of an Indian tribe as a government entity that has a special relationship with the U.S. Government. This relationship recognizes that Indian tribes receive some benefits or reserve some rights not available to other citizens; for example, health and education benefits from the trust relationship or off-reservation hunting and fishing rights related to treaties with tribal governments.

The basic requirements for attaining Federal recognition include the following in the form of a petition to the Secretary of the Interior:

- A statement of facts regarding the continued identity of a group as "American Indian" or "Aboriginal" from historic times to the present
- Evidence that a group exists as a community separate from other populations
- Evidence it has maintained political influence over its members
- A governing document such as a constitution
- An enrollment list of all members
- Not be involved in pending legislation regarding their status, or terminated by former congressional action

Federally Recognized Indian Tribes. Federally Recognized Indian Tribes means an Indian group for which: (1) Congress or an executive order created a reservation for the group either by treaty (before 1871), statutorily expressed, agreement by executive order, or other valid administrative action; and (2) the United States has some continuing political relationship with the group, such as providing services through the BIA.

Federal Reserved Water Rights. Water is reserved by the United States as of the date when a Federal agency first established the purposes and intent for which an Indian reservation was created. The *Winters Doctrine* contains a description of the implied right to a water reserve on behalf of Federally Recognized Indian Tribes.

Fee Title (Fee Simple Title). Absolute ownership of a land area unencumbered by any other interest or estate.

Indian Country. Broadly speaking, Indian Country is all the land under supervision of the U.S. Government that has been set aside for the use of Indians. This would include Indian reservations as well as other areas under Federal jurisdiction and designated for Indian use. As a general rule,

state jurisdiction does not extend to Indian Country and, instead, tribal and Federal law governs. If someone says, "The crime took place in Indian Country," this implies that tribal or Federal law governs the crime, and the state has no jurisdiction (exception P.L. 280). Indian Country designation "is the benchmark for approaching the allocation of Federal, tribal, and state authority with respect to Indians and Indian lands."

The term "Indian Country" was first used by Congress in 1790 to describe the territory controlled by Indians. Today, a Federal statute concerning criminal jurisdiction provides the Federal Government's definition of this term. The law, Title 18, U.S. Code, section 1151 (18 U.S.C. 1151), states—

> *"Indian Country"...means (a) all land within the limits of any Indian reservation under jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.*

Proof that an area is Indian Country often involves complicated historical facts; such proof is an issue of law to be decided by a judge rather than a jury.

Section 1151 [above] identifies three areas as being "Indian Country:"

- First, Indian Country includes all lands within boundaries of an Indian reservation, regardless of ownership. Therefore, land located within a reservation but owned by a non-Indian is Indian Country. (There is an exception to this rule, discussed below.) Even rights-of-way through reservation lands, such as state or Federal highways, remain a part of Indian Country. When the Federal Government sets aside land under Federal supervision for Indians, the land becomes Indian Country. This is true even if there is no official proclamation that a reservation is being created, even if years go by before the tribe defends its property interests, and even if the land is not Federally owned trust land.
- Second, Indian Country includes "all dependent Indian communities" within the United States. A dependent Indian community is any area of land which has been set aside by the Federal Government for the use, occupancy or benefit of Indians, even if it is not part of a reservation. The Pueblos of New Mexico, whose lands are owned by the tribes themselves but under Federal supervision, are an excellent example. Other examples include tribal housing projects located on Federal land and Federal schools operated for Indian children on Federal land. However, predominant Indian use by itself will not create a dependent Indian community. There must also be some evidence of Federal or tribal control or supervision and an indication that the Federal Government intended to set the area apart primarily for Indian use.

- Finally, Section 1151 includes as Indian Country all "trust" and all "restricted" allotments of land, whether or not these allotments are inside an Indian reservation. (A trust allotment is Federal land which has been set aside for the exclusive use of an Indian, who is called the "allottee." A restricted allotment is land for which Federal approval must be obtained before it can be sold, leased, or mortgaged, whether the land is owned by the Federal Government or not. Even a "nontrust" allotment outside the reservation is considered Indian Country for as long as the allottee retains ownership. (A nontrust allotment is land the Federal Government has given to an Indian with full rights of ownership, as opposed to a trust allotment, ownership of which is retained by the United States). If the Federal Government has eliminated a tribe's reservation, but trust land still exists, either tribally or individually held, this trust land is Indian Country.

To summarize, all land within an Indian reservation, even land owned by non-Indians is Indian Country. In addition, trust and restricted Indian allotments outside a reservation are considered Indian Country, and so are dependent Indian communities.

There is, however, one exception to the rule that all land within a reservation is Indian Country. Privately owned land that can be classified as a "non-Indian community" is not Indian Country for purposes of Federal liquor laws. The state, rather than the tribe or the Federal Government, has jurisdiction to regulate the introduction of liquor in non-Indian communities, even though these communities are within the boundaries of an Indian reservation.

Indian Court. Any Indian tribal court or court of Indian offenses.

Indian Land. Any land in collective tribal holding or ownership for which the Secretary of the Interior has a continuing trust responsibility to manage for the benefit of the respective tribe. In the past, this term described certain parcels or areas where Indians lived and represented a smaller concept than Indian territory.

Indian Reservation. Usually created by treaty document or an executive order, this term refers to lands set aside for occupants' use, and benefit of American Indians and for other purposes. The primary intent of the United States at treaty negotiations was to make way for Euro-American settlement and maintain (or secure) peace between Indian peoples and European settlers. This land, described in metes and bounds, was put into a "trust" status with the U.S. agency (later Department of the Interior, Bureau of Indian Affairs) having the responsibility to administer reservation lands for the use and benefit of Indian people, consistent with the intent of the treaty. Some reservations were established after a peacekeeping treaty.

Indian Territory. These are unsurveyed lands that were recognized by the Federal Government to be occupied or used by Indians. Prior to the U.S. Constitution, lands occupied or used by American Indians were referred to as "Indian Territory." Historic documents dating back to the 16th century refer to these unsurveyed regions as a "territory."

Indian Tribe. Any American Indian or Alaska Native tribe, band, Nation, pueblo, community, rancheria, colony, or group subject to the jurisdiction of the United States, and recognized as possessing the powers of self-government and meeting the provisions in 25 CFR 83.7 or those recognized in statutes or treaties with the United States.

Minimum Instream Flows. Flows of water in a stream or river necessary to maintain a fish population. Quantities are usually measured in cubic feet per minute (CFM). This term is derived from Indian Water Rights litigation.

Nonconsumptive Water Uses/Rights. Water that is used within the stream, a body of water, that passes through a biological system or other use, is then returned to the original source at or near the original volume or quantity. The operation of a fish hatchery is a nonconsumptive use of water.

Nontrust Allotment. This is land the Federal Government deeded, in fee simple title, to an individual Indian whereon there is no trust obligation by the Secretary of the Interior (see trust allotments).

Open and Unclaimed or Unoccupied Lands. This term is also a trademark of the treaties negotiated in the 1850's. At the time of signing treaty documents, domestic use of horses and cattle was the main non-Indian lifestyle in the American West and had been for a full century. The term applied to public domain lands held by the United States that had not been fenced or claimed through a land settlement act. Today, "open and unclaimed lands" applies to lands remaining in the public domain (for the purposes of hunting, gathering foods, and grazing livestock or trapping). The courts have ruled that National Forest System lands reserved from the public domain are open, unclaimed, or unoccupied land, and as such the term applies to reserved treaty rights on National Forest System land.

Powers of Self-Government. Means and includes all governmental powers possessed by an Indian tribe: executive, legislative, and judicial; and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses.

Public Domain Land. This term describes any land ceded to the Federal Government from the colonial states, and land acquired by the Federal Government by purchase from or treaty with the Indians or foreign powers.

Recognized Title. Indian title that is authorized by treaty, statute, or executive order. Recognized title rights are protected under the Fifth Amendment to the Constitution; therefore, if extinguished, there is a right to compensation.

Restricted Allotment. Land that must receive Federal approval before it can be sold, leased, or mortgaged, whether the land is owned by the Federal Government or not.

Sacred Site. Means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian or Alaska Native tribe, or Indian or Alaska Native individual determined to be an appropriately authoritative

representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the Federal agency of the existence of such a site.

Sovereignty. First addressed in the U.S. Constitution, (Article I, Section 8 and Article VI). For Indian tribes that have Federal recognition, this is *the inherent governmental power from which all specific political powers are derived. Indian governmental powers, with some exceptions, are not powers granted by Congress, but are inherent powers of a limited sovereignty that have never been extinguished. Congress has the authority to limit or abolish tribal powers. However, without congressional action, a tribe retains the inherent right to self-government and no state may impose its laws on a reservation* (See also Tribal Self-Governance).

The Supreme Court first recognized the inherent right of tribal sovereignty in an 1832 case, *Worcester v. Georgia*. Worcester decided the question of whether the State of Georgia could impose its laws on the Cherokee Indian Reservation, a reservation located within the state's borders. In holding that Georgia could not extend its laws within the reservation, the Court stated:

> *Indian Nations (are) distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States...Indian nations had always been considered as distinct, independent political communities, retaining their original rights, as the undisputed possessors of the soil from time immemorial...The Cherokee Nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and the citizens of Georgia, have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the Acts of Congress.*

The Worcester Doctrine of inherent *tribal sovereignty* has undergone some changes over the years, but its basic premise remains the same. An Indian tribe is a distinct political government. Congress has the authority to limit or even abolish tribal powers. Absent congressional action, a tribe retains its inherent right to self-government, and no state may impose its laws on the reservation. The Court reaffirmed this principle in 1991: "Indian tribes are "domestic dependent nations," which exercise inherent sovereign authority over their members and territories. Moreover, in recent years Congress has made a determined effort to strengthen tribal self-government. As the Supreme Court remarked in 1983, Congress appears "firmly committed to the goal of promoting tribal self-government, a goal embodied in numerous Federal statutes."

Traditional. The beliefs, acts, practices, objects or sites for the perpetuation of an Indian culture originating from or historically located at a specific

area. This may include cultural practices that are so interrelated with spiritual activities that they cannot be separated from the land location.

Treaty. A legally binding agreement between two or more sovereign governments. With respect to American Indian tribes, a treaty is a document negotiated and concluded by a representative of the President of the United States and ratified by two-thirds majority vote of the U.S. Senate.

Treaty Boundaries. A modern term that applies to lands described within the treaty document, usually outlining an area of land that was ceded to the United States.

Treaty Rights. Tribal rights or interests, reserved in treaties, by Indian tribes for the use and benefit of their members. Such uses are described in the respective treaty document. Only Congress may abolish or modify treaties or treaty rights.

Tribal Government. A written system of rules or a constitution adopted by a tribal governing body that governs the actions and conduct of the general membership of the tribe(s). It may include such activities as law and order ordinances, tribal membership criteria, or regulations to govern the use of Indian-owned natural resources in Indian Country; usually within the bounds of an Indian reservation.

Tribal Self-Governance. First stated in modern terms by former President Nixon in 1970 as "Self Determination," this refers to the ability of Indian tribal governments to make decisions that affect either the general tribal population or tribal assets—a modern U.S. Indian policy that reinstates the independent decisionmaking process of Indian tribal entities that had existed before European contact. In 1982, Congress passed new authorities whereby Indian tribes could sign a compact directly with the Secretary of the Interior without involving the Bureau of Indian Affairs in the delivery of Federal services. Using appropriations formerly sent through the Bureau of Indian Affairs, Indian tribes can now prioritize their own expenditures of Federal funds.

Trust Allotment. Federal land set aside for the exclusive use of an Indian, who is the allottee. The Federal Government retains land ownership. Many allotments are outside the bounds of Indian reservations and are called public domain allotments.

Trust Land. Any land in collective tribal holding or individual ownership for which the Secretary of the Interior has a continuing trust responsibility to manage in a manner to benefit the respective tribe or individual. The most common example is forested acres on a reservation. Some trust lands were set aside as compensation for claims made against the Government, most of which are off-reservation.

Trust Responsibility. This term has never been defined by the U.S. Congress, any President, or any Cabinet official. Generally, it is a set of principles and concepts outlining the responsibilities of the U.S. Government to act as the trustee of Indian people and Indian-owned assets. The U.S. Government, through the President, has certain responsibilities to protect

Indian property and rights, Indian lands, and resources. The trust responsibility may involve a fiduciary obligation in which the President, through the Secretary of the Interior, acts as the trustee of Indian assets. Fulfilling or redeeming a trust responsibility, can best be reflected or demonstrated as a matter of action; a stream that was protected, a site that was maintained intact, a property right that has been left unaffected by a Federal action. The writing of an environmental document is not an example of fulfillment of a trust duty.

Usual and Accustomed Grounds and Stations (or Areas). This treaty term was used by I.I. Stevens in 12 treaties in the Northwestern United States. It describes lands adjacent to streams, rivers, or shorelines to which a tribe(s) usually traveled or was accustomed to travel for the purpose of taking fish. As this term applies to National Forest Systems lands, these areas are outside reservation boundaries. Western Federal courts have either referred to or defined the term when deciding lawsuits about the extent of a tribe's off-reservation treaty right to take fish. It has not been found by the courts to include hunting, gathering, grazing, or trapping. It is possible for "usual and accustomed areas" to extend beyond treaty area boundaries and to overlap large areas of a neighboring tribe, based on the specific treaty language. *This designation has been found by the court to create a property interest in the land, an encumbrance on the site that remains regardless of land ownership.*

Usufructuary. Having the legal right of using and enjoying the fruits or profits of something belonging to another. A land-use right where title to the land belongs to another person. A hunting right on National Forest System lands is an example of a usufructuary right.

Vested Right. Rights so completely settled they are not subject to be defeated or canceled by others. They cannot be interfered with by retrospective laws nor deprived of arbitrarily without injustice. An immediate or fixed right to present or future enjoyment which does not depend on an event that is uncertain. It is complete and consummated, and cannot be divested without the consent of the owner. Fixed, established, and no longer open to controversy.

Appendix C:
Federally Recognized Indian Tribes

The following tribal entities within the contiguous 48 states are recognized and eligible to receive services from the United States Bureau of Indian Affairs. For further information contact Bureau of Indian Affairs, Division of Tribal Government Services, 1849 C Street N.W., Washington, DC 20240; Telephone number (202) 208-7445.[1] Figure C.1 shows the location of the Federally Recognized Tribes.

1. Absentee-Shawnee Tribe of Indians of Oklahoma

2. Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California

3. Ak Chin Indian Community of Papago Indians of the Maricopa, Ak Chin Reservation, Arizona

4. Alabama and Coushatta Tribes of Texas

5. Alabama-Quassarte Tribal Town of the Creek Nation of Oklahoma

6. Alturas Rancheria of Pit River Indians of California

7. Apache Tribe of Oklahoma

8. Arapahoe Tribe of the Wind River Reservation, Wyoming

9. Aroostook Band of Micmac Indians of Maine

10. Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana

11. Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California

12. Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin

13. Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians Bay Mills. Reservation, Michigan

14. Berry Creek Rancheria of Maidu Indians of California

15. Big Lagoon Rancheria of Smith River Indians of California

[1] *Federal Register*, Vol. 61, No. 220, November 13, 1996.

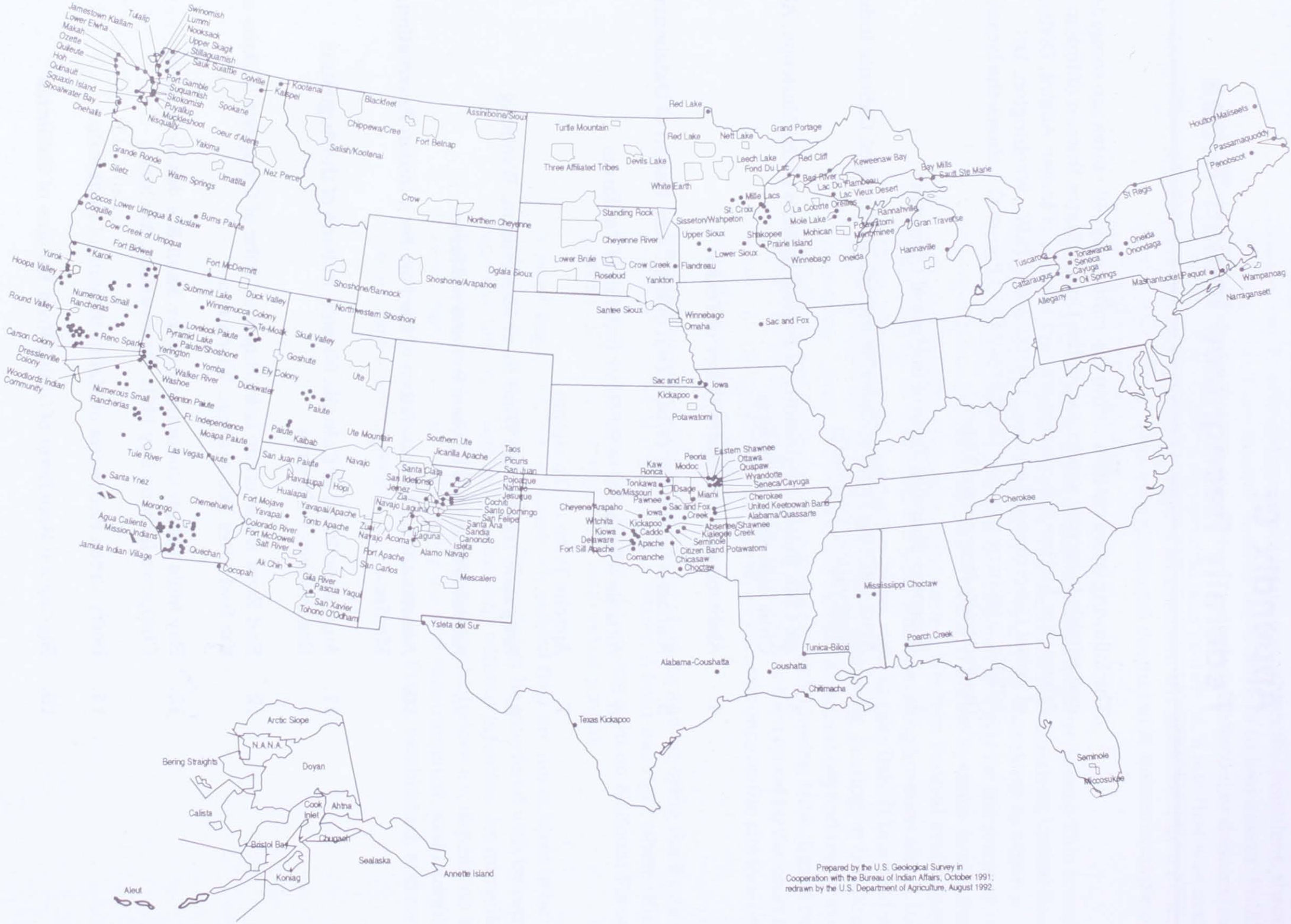


Figure C.1.—Locations of Federally Recognized Indian Tribes and Alaska Native Corporations.

16. Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California

17. Big Sandy Rancheria of Mono Indians of California

18. Big Valley Rancheria of Pomo and Pit River Indians of California

19. Blackfeet Tribe of the Blackfeet Indian Reservation of Montana

20. Blue Lake Rancheria of California

21. Bridgeport Paiute Indian Colony of California

22. Buena Vista Rancheria of Me-Wuk Indians of California

23. Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon

24. Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California

25. Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California

26. Caddo Indian Tribe of Oklahoma

27. Cahuilla Band of Mission Indians of the Cahuilla Reservation, California

28. Cahto Indian Tribe of the Laytonville Rancheria, California

29. Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California

30. Capitan Grande Band of Diegueno Mission Indians of California:

    - Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
    - Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California

31. Cayuga Nation of New York

32. Cedarville Rancheria of Northern Paiute Indians of California

33. Chemehuevi Indian Tribe of the Chemehuevi Reservation, California

34. Cher-Ae Heights Indian Community of the Trinidad Rancheria, California

35. Cherokee Nation of Oklahoma

36. Cheyenne–Arapahoe Tribes of Oklahoma

37. Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota

38. Chickasaw Nation of Oklahoma

39. Chicken Ranch Rancheria of Me-Wuk Indians of California

40. Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana

41. Chitimacha Tribe of Louisiana

42. Choctaw Nation of Oklahoma

43. Citizen Band Potawatomi Indian Tribe of Oklahoma

44. Cloverdale Rancheria of Pomo Indians of California

45. Coast Indian Community of Yurok Indians of the Resighini Rancheria, California

46. Cocopah Tribe of Arizona

47. Coeur d'Alene Tribe of the Coeur d'Alene Reservation, Idaho

48. Cold Springs Rancheria of Mono Indians of California

49. Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California

50. Comanche Indian Tribe of Oklahoma

51. Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana

52. Confederated Tribes of the Chehalis Reservation, Washington

53. Confederated Tribes of the Colville Reservation, Washington

54. Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon

55. Confederated Tribes of the Goshute Reservation, Nevada and Utah

56. Confederated Tribes of the Grand Ronde Community of Oregon

57. Confederated Tribes of the Siletz Reservation, Oregon

58. Confederated Tribes of the Umatilla Reservation, Oregon

59. Confederated Tribes of the Warm Springs Reservation of Oregon

60. Confederated Tribes and Bands of the Yakima Indian Nation of the Yakima Reservation, Washington

61. Coquille Tribe of Oregon

62. Cortina Indian Rancheria of Wintun Indians of California

63. Coushatta Tribe of Louisiana

64. Covelo Indian Community of the Round Valley Reservation, California

65. Cow Creek Band of Umpqua Indians of Oregon

66. Coyote Valley Band of Pomo Indians of California

67. Creek Nation of Oklahoma

68. Crow Tribe of Montana

69. Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota

70. Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California

71. Death Valley Timbi-Sha Shoshone Band of California

72. Delaware Tribe of Western Oklahoma

73. Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota

74. Dry Creek Rancheria of Pomo Indians of California

75. Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada

76. Eastern Band of Cherokee Indians of North Carolina

77. Eastern Shawnee Tribe of Oklahoma

78. Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California

79. Elk Valley Rancheria of Smith River Tolowa Indians of California

80. Ely Shoshone Tribe of Nevada

81. Enterprise Rancheria of Maidu Indians of California

82. Flandreau Santee Sioux Tribe of South Dakota

83. Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin

84. Fort Belknap Indian Community of the Fort Belknap Reservation of Montana

85. Fort Bidwell Indian Community of Paiute Indians of the Fort Bidwell Reservation, California

86. Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California

87. Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada

88. Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona

89. Fort Mojave Indian Tribe of Arizona

90. Fort Sill Apache Tribe of Oklahoma

91. Gila River Pima-Maricopa Indian Community of the Gila River Indian Reservation of Arizona

92. Grand Traverse Band of Ottawa and Chippewa Indians of Michigan

93. Greenville Rancheria of Maidu Indians of California

94. Grindstone Indian Rancheria of Wintun-Wailaki Indians of California

95. Guidiville Rancheria of California

96. Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan

97. Havasupai Tribe of the Havasupai Reservation, Arizona

98. Hoh Indian Tribe of the Hoh Indian Reservation, Washington

99. Hoopa Valley Tribe of the Hoopa Valley Reservation, California

100. Hopi Tribe of Arizona

101. Hopland Band of Pomo Indians of the Hopland Rancheria, California

102. Houlton Band of Maliseet Indians of Maine

103. Hualapai Tribe of the Hualapai Indian Reservation, Arizona

104. Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California

105. Iowa Tribe of Kansas and Nebraska

106. Iowa Tribe of Oklahoma

107. Jackson Rancheria of Me-Wuk Indians of California

108. Jamestown Klallam Tribe of Washington

109. Jamul Indian Village of California

110. Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico

111. Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona

112. Kalspel Indian Community of the Kalspel Reservation, Washington

113. Karuk Tribe of California

114. Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California

115. Kaw Indian Tribe of Oklahoma

116. Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan

117. Kialegee Tribal Town of the Creek Indian Nation of Oklahoma

118. Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas

119. Kickapoo Tribe of Oklahoma

120. Kickapoo Traditional Tribe of Texas

121. Kiowa Indian Tribe of Oklahoma

122. Klamath Indian Tribe of Oregon

123. Kootenai Tribe of Idaho

124. La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California

125. La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California

126. La Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin

127. Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin

128. Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan

129. Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada

130. Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California

131. Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada

132. Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota

133. Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington

134. Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota

135. Lummi Tribe of the Lummi Reservation, Washington

136. Lytton Rancheria of California

137. Makah Indian Tribe of the Makah Indian Reservation, Washington

138. Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California

139. Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California

140. Mashantucket Pequot Tribe of Connecticut

141. Mechoopda Indian Tribe of Chico Rancheria, California

142. Menominee Indian Tribe of Wisconsin

143. Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California

144. Mescalero Apache Tribe of the Mescalero Reservation, New Mexico

145. Miami Tribe of Oklahoma

146. Miccosukee Tribe of Indians of Florida

147. Middletown Rancheria of Pomo Indians of California

148. Minnesota Chippewa Tribe, Minnesota—Six component reservations:

    - Bois Forte Band (Nett Lake)
    - Fond du Lac Band
    - Grand Portage Band
    - Leech Lake Band
    - Mille Lac Band
    - White Earth Band

149. Mississippi Band of Choctaw Indians, Mississippi

150. Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada

151. Modoc Tribe of Oklahoma

152. Mooretown Rancheria of Maidu Indians of California

153. Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California

154. Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington

155. Narrangansett Indian Tribe of Rhode Island

156. Navajo Tribe of Arizona, New Mexico, and Utah

157. Nez Perce Tribe of Idaho

158. Nisqually Indian Community of the Nisqually Reservation, Washington

159. Nooksack Indian Tribe of Washington

160. Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana

161. Northfork Rancheria of Mono Indians of California

162. Northwestern Band of Shoshoni Indians of the Utah (Washakie)

163. Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota

164. Omaha Tribe of Nebraska

165. Oneida Nation of New York

166. Oneida Tribe of Wisconsin

167. Onondaga Nation of New York

168. Osage Tribe of Oklahoma

169. Ottawa Tribe of Oklahoma

170. Otoe/Missouri Tribe of Oklahoma

171. Paiute Indian Tribe of Utah

172. Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California

173. Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada

174. Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation California

175. Pala Band of Luiseno Mission Indians of the Pala Reservation, California

176. Pascua Yaqui Tribe of Arizona

177. Passamaquoddy Tribe of Maine

178. Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, California

179. Pawnee Indian Tribe of Oklahoma

180. Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California

181. Penobscot Tribe of Maine

182. Peoria Tribe of Oklahoma

183. Picayune Rancheria of Chukchansi Indians of California

184. Pinoleville Rancheria of Pomo Indians of California

185. Pit River Tribe of California including:

- Big Bend
- Lookout
- Montgomery Creek, and
- Roaring Creek Rancherias
- XL Ranch

186. Poarch Band of Creek Indians of Alabama

187. Ponca Tribe of Indians of Oklahoma

188. Ponca Tribe of Nebraska

189. Port Gamble Indian Community of the Port Gamble Reservation, Washington

190. Potter Valley Rancheria of Pomo Indians of California

191. Prairie Band of Potawatomi Indians of Kansas

192. Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota

193. Pueblo of Acoma, New Mexico

194. Pueblo of Cochiti, New Mexico

195. Pueblo of Jemez, New Mexico

196. Pueblo of Isleta, New Mexico

197. Pueblo of Laguna, New Mexico

198. Pueblo of Nambe, New Mexico

199. Pueblo of Picuris, New Mexico

200. Pueblo of Pojoaque, New Mexico

201. Pueblo of San Felipe, New Mexico

202. Pueblo of San Juan, New Mexico

203. Pueblo of San Ildefonso, New Mexico

204. Pueblo of Sandia, New Mexico

205. Pueblo of Santa Ana, New Mexico

206. Pueblo of Santa Clara, New Mexico

207. Pueblo of Santo Domingo, New Mexico

208. Pueblo of Taos, New Mexico

209. Pueblo of Tesuque, New Mexico

210. Pueblo of Zia, New Mexico

211. Puyallup Tribe of the Puyallup Reservation, Washington

212. Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Washington

213. Quapaw Tribe of Oklahoma

214. Quartz Valley Rancheria of Karok, Shasta, and Upper Klamath Indians of California

215. Quechan Tribe of the Fort Yuma Indian Reservation, California

216. Quileute Tribe of the Quileute Reservation, Washington

217. Quinault Tribe of the Quinault Reservation, Washington

218. Ramona Band or Village of Cahuilla Mission Indians of California

219. Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin

220. Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota

221. Redding Rancheria of Pomo Indians of California

222. Redwood Valley Rancheria of Pomo Indians of California

223. Reno-Sparks Indian Colony, Nevada

224. Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California

225. Robinson Rancheria of Pomo Indians of California

226. Rohnerville Rancheria of Bear River or Mattole Indians of California

227. Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota

228. Rumsey Indian Rancheria of Wintun Indians of California

229. Sac and Fox Tribe of Mississippi in Iowa

230. Sac and Fox Tribe of Missouri in Kansas and Nebraska

231. Sac and Fox Tribe of Oklahoma

232. Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation

233. Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona

234. San Carlos Apache Tribe of the San Carlos Reservation, Arizona

235. San Juan Southern Paiute Tribe of Arizona

236. San Manual Band of Serrano Mission Indians of the San Manual Reservation, California

237. San Pasqual Band of Diegueno Mission Indians of California

238. Santa Rosa Indian Community of the Santa Rosa Rancheria, California

239. Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California

240. Santa Ynez Band of Chumash Mission Indians of the Santa Ysabel Reservation, California

241. Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California

242. Santee Sioux Tribe of the Santee Reservation of Nebraska

243. Sauk-Suiattle Indian Tribe of Washington

244. Sault Ste. Marie Tribe of Chippewa Indians of Michigan

245. Scotts Valley Band of Pomo Indians of California

246. Seminole Nation of Oklahoma

247. Seminole Tribe of Florida, Dania, Big Cypress, and Brighton Reservations

248. Seneca Nation of New York

249. Seneca-Cayuga Tribe of Oklahoma

250. Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake)

251. Sheep Ranch Rancheria of Me-Wuk Indians of California

252. Sherwood Valley Rancheria of Pomo Indians of California

253. Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California

254. Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington

255. Shoshone Tribe of the Wind River Reservation, Wyoming

256. Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho

257. Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada

258. Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota

259. Skokomish Indian Tribe of the Skokomish Reservation, Washington

260. Skull Valley Band of Goshute Indians of Utah

261. Smith River Rancheria of California

262. Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California

263. Sokoagon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin

264. Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado

265. Spokane Tribe of the Spokane Reservation, Washington

266. Squaxin Island Tribe of the Squaxin Island Reservation, Washington

267. St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation

268. St. Regis Band of Mohawk Indians of New York

269. Standing Rock Sioux Tribe of North and South Dakota

270. Stockbridge-Munsee Community of Mohican Indians of Wisconsin

271. Stillaguamish Tribe of Washington

272. Summit Lake Paiute Tribe of Nevada

273. Suquamish Indian Tribe of the Port Madison Reservation, Washington

274. Susanville Indian Rancheria of Paiute, Maidu, Pit River, and Washoe Indians of California

275. Swinomish Indians of the Swinomish Reservation, Washington

276. Sycuan Band of Diegueno Mission Indians of California

277. Table Bluff Rancheria of Wiyot Indians of California

278. Table Mountain Rancheria of California

279 Te-Moak Tribes of Western Shoshone Indians of Nevada

280. Thlopthlocco Tribal Town of the Creek Nation of Oklahoma

281. Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota

282. Tohono O'odham Nation of Arizona (formerly known as the Papago Tribe of the Sells, Gila Bend, and San Xavier Reservation, Arizona)

283. Tonawanda Band of Seneca Indians of New York

284. Tonkawa Tribe of Indians of Oklahoma

285. Tonto Apache Tribe of Arizona

286. Torres-Martinez Band of Cahuilla Mission Indians of California

287. Tule River Indian Tribe of the Tule River Reservation, California

288. Tulalip Tribes of the Tulalip Reservation, Washington

289. Tunica-Biloxi Indian Tribe of Louisiana

290. Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California

291. Turtle Mountain Band of Chippewa Indians of North Dakota

292. Tuscarora Nation of New York

293. Twenty-Nine Palms Band of Luiseno Mission Indians of California

294. United Keetoowah Band of Cherokee Indians of Oklahoma

295. Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California

296. Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota

297. Upper Skagit Indian Tribe of Washington

298. Ute Indian Tribe of the Uintah and Ouray Reservation, Utah

299. Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, and Utah

300. Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California

301. Walker River Paiute Tribe of the Walker River Reservation, California

302. Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts

303. Washoe Tribe of Nevada and California (Carson Colony, Dresslerville, and Washoe Ranches)

304. White Mountain Apache Tribe of the Fort Apache Reservation, Arizona

305. Wichita and Affiliated Tribes (Wichita, Keechi, Waco, and Tawakonie) of Oklahoma

306. Winnebago Tribe of Nebraska

307. Winnemucca Indian Colony of Nevada

308. Wisconsin Winnebago Indian Tribe of Wisconsin

309. Wyandotte Tribe of Oklahoma

310. Yankton Sioux Tribe of South Dakota

311. Yavapai-Apache Indian Community of the Camp Verde Reservation, Arizona

312. Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona

313. Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch, Nevada

314. Yomba Shoshone Tribe of the Yomba Reservation, Nevada

315. Ysleta Del Sur Pueblo of Texas

316. Yurok Tribe of the Hoopa Valley Reservation, California

317. Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

318. Village of Afognak

319. Native Village of Akhiok

320. Akiachak Native Community

321. Akiak Native Community

322. Native Village of Akutan

323. Village of Alakanuk

324. Alatna Village

325. Native Village of Aleknagik

326. Algaaciq Native Village (St. Mary's)

327. Allakaket Village

328. Native Village of Ambler

329. Village of Anaktuvuk Pass

330. Yupiit of Andreafski

331. Angoon Community Association

332. Village of Aniak

333. Anvik Village

334. Arctic Village (See Native Village of Venetie Tribal Government)

335. Native Village of Atka

336. Atqasuk Village (Atkasook)

337. Village of Atmautluak

338. Native Village of Barrow

339. Beaver Village

340. Native Village of Belkofski

341. Village of Bill Moore's Slough

342. Birch Creek Village

343. Native Village of Brevig Mission

344. Native Village of Buckland

345. Native Village of Cantwell

346. Native Village of Chanega (aka Chenega)

347. Chalkyitsik Village

348. Village of Chefornak

349. Chevak Native Village

350. Chickaloon Native Village

351. Native Village of Chignik

352. Native Village of Chignik Lagoon

353. Chignik Lake Village

354. Chilkat Indian Village (Klukwan)

355. Chilkoot Indian Association (Haines)

356. Chinik Eskimo Community (Golovin)

357. Native Village of Chistochina

358. Native Village of Chitina

359. Native Village of Chuatbaluk (Russian Mission, Kuskokwim)

360. Chuloonawick Native Village

361. Circle Native Community

362. Village of Clarks's Point

363. Native Village of Council

364. Craig Community Association

365. Village of Crooked Creek

366. Native Village of Deering

367. Native Village of Dillingham

368. Native Village of Diomede (aka Inalik)

369. Village of Dot Lake

370. Douglas Indian Association

371. Native Village of Eagle

372. Native Village of Eek

373. Egegik Village

374. Eklutna Native Village

375. Native Village of Ekuk

376. Ekwok Village

377. Native Village of Elim

378. Emmonak Village

379. Evansville Village (aka Bettles Field)

380. Native Village of Eyak (Cordova)

381. Native Village of False Pass

382. Native Village of Fort Yukon

383. Native Village of Gakona

384. Galena Village (aka Louden Village)

385. Native Village of Gambell

386. Native Village of Georgetown

387. Native Village of Goodnews Bay

388. Organized Village of Grayling (aka Holikachuk)

389. Gulkana Village

390. Native Village of Hamilton

391. Healy Lake Village

392. Holy Cross Village

393. Hoonah Indian Association

394. Native Village of Hooper Bay

395. Hughes Village

396. Huslia Village

397. Hydaburg Cooperative Association

398. Igiugig Village

399. Village of Iliamna

400. Inupiat Community of the Arctic Slope

401. Ivanoff Bay Village

402. Kaguyak Village

403. Organized Village of Kake

404. Kaktovik Village (aka Barter Island)

405. Village of Kalskag

406. Village of Kaltag

407. Native Village of Kanatak

408. Native Village of Karluk

409. Organized Village of Kasaan

410. Native Village of Kasigluk

411. Kenaitze Indian Tribe

412. Ketchikan Indian Corporation

413. Native Village of Kiana

414. Agdaagux Tribe of King Cove

415. King Island Native Community

416. Native Village of Kipnuk

417. Native Village of Kivalina

418. Klawock Cooperative Association

419. Native Village of Kluti Kaah (aka Copper Center)

420. Knik Village

421. Native Village of Kobuk

422. Kokhanok Village

423. Koliganek Village

424. Native Village of Kongiganak

425. Village of Kotlik

426. Native Village of Kotzebue

427. Native Village of Koyuk

428. Koyukuk Native Village

429. Organized Village of Kwethluk

430. Native Village of Kwigillingok

431. Native Village of Kwinhagak (aka Quinhagak)

432. Native Village of Larsen Bay

433. Levelock Village

434. Lesnoi Village (aka Woody Island)

435. Lime Village

436. Village of Lower Kalskag

437. Manley Hot Springs Village

438. Manokotak Village

439. Native Village of Marshall (aka Fortuna Ledge)

440. Native Village of Mary's Igloo

441. MacGrath Native Village

442. Native Village of Mekoryuk

443. Mentasta Lake Village

444. Metlakatla Indian Community, Annette Island Reserve

445. Native Village of Minto

446. Native Village of Mountain Village

447. Naknek Native Village

448. Native Village of Nanwalek (aka English Bay)

449. Native Village of Napaimute

450. Native Village of Napakiak

451. Native Village of Napaskiak

452. Native Village of Nelson Lagoon

453. Nenana Native Association

454. New Stuyahok Village

455. Newhalen Village

456. Newtok Village

457. Native Village of Nightmute

458. Nikolai Village

459. Native Village of Nikolski

460. Ninilchik Village

461. Native Village of Noatak

462. Nome Eskimo Community

463. Nondalton Village

464. Noorvik Native Community

465. Northway Village

466. Native Village of Nuiqsut (aka Nooiksut)

467. Nulato Village

468. Native Village of Nunapitchuk

469. Village of Obogamiut

470. Village of Old Harbor

471. Orutsararmuit Native Village (aka Bethel)

472. Oscarville Traditional Village

473. Native Village of Ouzinkie

474. Native Village of Paimiut

475. Pauloff Harbor Village

476. Pedro Bay Village

477. Native Village of Perryville

478. Petersburg Indian Association

479. Native Village of Pilot Point

480. Pilot Station Traditional Village

481. Native Village of Pitka's Point

482. Platinum Traditional Village

483. Native Village of Point Hope

484. Native Village of Point Lay

485. Native Village of Port Graham

486. Native Village of Port Heiden

487. Native Village of Port Lions

488. Portage Creek Village (aka Ohgsenakale)

489. Pribilof Islands Aleut Communities of St. Paul and St. George Islands

490. Qagan Toyagungin Tribe of Sand Point Village

491. Rampart Village

492. Village of Red Devil

493. Native Village of Ruby

494. Native Village of Russion Mission (Yukon)

495. Village of Salamatoff

496. Organized Village of Saxman

497. Native Village of Savoonga

498. Saint George (See Pribilof Islands Aleut Communities of St. Paul and St. George Islands)

499. Native Village of Saint Michael

500. Saint Paul (See Pribilof Islands Aleut Communities of St. Paul and St. George Islands)

501. Native Village of Scammon Bay

502. Native Village of Selawik

503. Seldovia Village Tribe

504. Shageluk Native Village

505. Native Village of Shaktoolik

506. Native Village of Sheldon's Point

507. Native Village of Shishmaref

508. Native Village of Shungnak

509. Sitka Tribe of Alaska

510. Skagway Village

511. Village of Sleetmute

512. Village of Solomon

513. South Naknek Village

514. Stebbins Community Association

515. Native Village of Stevens

516. Village of Stony River

517. Takotna Village

518. Native Village of Tanacross

519. Native Village of Tanana

520. Native Village of Tatitlek

521. Native Village of Tazlina

522. Telida Village

523. Native Village of Teller

524. Native Village of Tetlin

525. Traditional Village of Togiak

526. Native Village of Toksook Bay

527. Tuluksak Native Community

528. Native Village of Tuntutuliak

529. Native Village of Tununak

530. Twin Hills Village

531. Native Village of Tyonek

532. Ugashik Village

533. Umkumiute Native Village

534. Native Village of Unalakleet

535. Qawalingin Tribe of Unalaska

536. Native Village of Unga

537. Village of Venetie (See Native Village of Venetie Tribal Government)

538. Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)

539. Village of Wainwright

540. Native Village of Wales

541. Native Village of White Mountain

542. Wrangell Cooperative Association

543. Yakutat Tlingit Tribe

Appendix D:
Indian Nations

The American Indian Digest

An Indian reservation is an area of land held in trust by the Federal Government reserved for Indian use (see Tables D.1 and D.2). The Secretary of the Interior is the trustee for the United States. The Bureau of Indian Affairs (BIA) is responsible to the trustee for administration and management of Indian trust lands.

- Approximately 300 reservations are Federally Recognized totaling some 55 million acres.
- 44 million acres are tribal trust lands.
- 11 million acres are individually owned.
- There are 12 State-recognized reservations.

Indian nations range in size from some California rancherias of less than 1 acre to the Navajo Nation at more than 17 million acres.

A few reservations are 100 percent tribal trust lands, and others are almost entirely owned by individuals.

Indian Nation Resources

Some Indian tribes have an impressive array of resources on their trust lands. It seems poetic justice that some of the desolate reservations have become valuable land because of minerals resources, pristine resources, and urban locations.

- 44.0 million acres in range and grazing.
- 5.3 million acres of commercial forest.
- 2.5 million acres of crop area.
- 4 percent of U.S. oil and gas reserves.
- 40 percent of U.S. uranium deposits.
- 30 percent of Western coal reserves.
- $2 billion in trust royalty payments.

Historically, Indians have been allowed to occupy lands until an economic and/or political requisition was mandated. The discovery of gold in the Black Hills of South Dakota, the cultivated lands of the five "civilized tribes" in the Southeastern States, and the discovery of oil in Oklahoma are

Table D.1.—Indian Landholdings in Acres

Tribe	State	Tribal Trust Land	Individual Trust Allotments	Total Indian Land
Navajo	AZ, NM, UT	14,715,093	717,077	15,432,170
Tohono O'odham	AZ	2,773,850	320	2,774,170
Pine Ridge	SD	749,883	1,314,624	2,064,507
Cheyenne River	SD	1,150,546	872,843	2,023,389
San Carlos	AZ	1,826,541	0	1,826,541
Wind River	WY	1,710,169	101,196	1,811,365
Rosebud	SD	1,135,230	641,009	1,776,239
Ft. Apache/White Mt	AZ	1,664,972	0	1,664,972
Hopi	AZ	1,560,993	220	1,561,213
Crow	MT	408,444	1,107,561	1,516,005
Standing Rock	ND, SD	422,512	825,822	1,248,334
Ft. Berthold	ND	596,257	604,409	1,200,666
Yakima	WA	904,411	225,851	1,130,262
Colville	WA	1,023,641	39,395	1,063,036
Uintah & Ouray	UT	1,007,238	14,318	1,021,556
Hualapai	AZ	992,463	0	992,463
Blackfeet	MT	302,072	356,630	937,702
Ft. Peck	MT	391,769	512,914	904,683
Jicarilla	NM	823,580	0	823,580
Warm Springs	OR	592,143	51,348	643,491
Flathead	MT	581,907	45,164	627,071
Ft. Belknap	MT	235,595	385,376	620,971
Ute Mountain	CO	588,825	8,483	597,308
Red Lake	MN	564,452	0	564,452
Ft. Hall	ID	260,837	299,041	489,878
Pyramid Lake	NV	476,729	0	476,729
Laguna	NM	458,933	2,165	461,098
Mescalero	NM	460,678	0	460,678
Northern Cheyenne	MT	318,072	118,875	436,947
Gila River	AZ	274,278	97,652	371,930

Source: Annual Report of Indian Lands, BIA Office of Trust Responsibilities, Sept. 30, 1985; BIA area offices Aberdeen, SD, Billings, MT, and Phoenix, AZ.

Table D.2.—State With the Greatest Acreages of Indian Land

State	Tribal	Individual	Government[a]	Percent Total Land
Alaska	44,086,773	884,100[b]	0	10.7
Arizona	19,775,958	311,579	90,697	27.7
New Mexico	7,252,326	630,293	270,276	10.5
Montana	2,671,416	2,868,124	11,803	5.9
South Dakota	2,399,531	2,121,188	1,606	9.2
Washington	2,097,842	467,785	3,164	5.6
Utah	2,286,448	32,838	87	4.3
Nebraska	2,141,996	43,208	7	4.4
Wyoming	2,908,095	101,537	1,296	3.2
Nevada	1,147,088	78,529	4,946	1.7
Oklahoma	96,839	1,000,165	2,298	2.5
Idaho	609,622	327,301	32,532	1.3
North Dakota	214,006	627,289	624	1.9
Minnesota	779,138	50,338	103	1.5
Oregon	660,367	135,052	378	1.3
Colorado	795,211	2,805	32	1.2
California	520,049	66,769	808	0.6
Florida	153,874	0	333	0.4
Maine	163,570	0	0	0.7
New York	118,199	0	0	0.3

[a]Land within a reservation which has been reserved by the Federal Government for schools, agency buildings, and so forth.
[b]This includes the 44 million acres distributed under the Alaska Native Claims Settlement Act (ANCSA) and owned in fee title by Alaska Natives.

Source: Bureau of Indian Affairs Acreages of Indian Lands by State, 1990.

explicit examples. The 500-year history of Indians versus the U.S. Government speaks for itself. *Congress giveth and Congress can taketh away.*

A few reservations are 100 percent occupied by Indians, and others are almost entirely occupied by non-Indians.

- According to the 1990 Census, there are 808,163 people living on Indian reservations.
- 437,431 (54 percent) are Indians; 388,000 Indians lived on 78 reservations with a population of 1,000 or more.
- 370,732 (46 percent) are non-Indians.

The 1830 Removal Act precipitated the infamous "Trail of Tears," which refers to the 1838 forced march of some 15,000 Cherokee Indians from their coveted farmlands in the Southeastern United States to Oklahoma Indian territory. More than 4,000 Indians died during the march from disease, exposure, and starvation.

In a broader context, the "Trail of Tears" was typical of the forced removal of some 60,000 members of the five "Civilized Tribes" (the Cherokee, the Creek, the Chickasaw, the Choctaw, and the Seminole) that lasted for nearly 10 years.

The forced removal was in violation of a Supreme Court decision by Chief Justice John Marshall in favor of the Indians to which President Andrew Jackson responded, "John Marshall has made his decision, now let him enforce it."

Index

A

Aboriginal rights 34, 40, 42, A–1
Aboriginal territory 4, 19, 25, 60, 61
Alaska Natives 5, 20–22, 28
  Compared with other Indians 19, 20–22, 35, 35–36
  Powers of 35–36
  Subsistence rights 20, 41, 42–43, 43, 46, 47–51, 48, 49, 51
  Traditional beliefs 70
    And land use 43, 46, 47–48, 50, 60, 68
Allotments 22–23
American Indian Review Commission 28
Apache 3
Assimilation 23
Athabaskan 20

B

Bureau of Indian Affairs 3, 22, 23, 24, 28, 29, 30, 43, 71, 72, C–1, D–1
Burns Paiute 70

C

California tribes 21, 69
Carter, Jimmy 29
Cherokee 3, 5, 71, D–4
Chickasaw D–4
Chippewa 5, 70
Choctaw D–4
Clinton, Bill 7, 30, 53
Collaboration
  Ecosystem management vii, 47, 67, 68
  Research 69, 69–70, 70
  Technical assistance 65, 70–72, 71, 72
Comanche 71
Consultation 36–37. *See also* U.S. American Indian/Alaska Native Policy: Government-to-government
  Compared with communication 38
  Intertribal groups and organizations 38
  Related laws 37–38
  With other groups and individuals 40
Cooperative Forestry 70, 71–72
Council on Environmental Quality 54, 57
Court cases 1, 17, 34, 64
  Cherokee Nation v. *Georgia* 17
  Choctaw Nation v. *Oklahoma* A–9
  G-O Road Case 63
  Johnson v. *M'Intosh* 17, 18
  Kimball v. *Callahan* A–11
  Lac Courte Oreilles Band of Chippewa v. *Wisconsin* 46, A–9
  Lyng v. *Northwest Indian Cemetery Protective Assn.* A–10
  Menominee v. *U.S.* A–11
  New Mexico v. *Mescalero Apache Tribe* 45
  Oliphant v. *Suquamish Indian Tribe* A–9
  Oregon Dept. of Fish/Wildlife v. *Klamath Indians* A–11
  Romero v. *U.S.* A–8
  Seufert Bros. v. *U.S.* A–10
  Tee-Hit-Ton Indians v. *U.S.* A–10
  U.S. v. *Adair* A–11
  U.S. v. *Beerigan* 20
  U.S. v. *Dann* A–10
  U.S. v. *Dion* A–9
  U.S. v. *Gemill* A–11
  U.S. v. *Kagama* A–8. *See also* U.S. and Indian Nation relationship: Guardian-ward
  U.S. v. *Washington* A–9
  U.S. v. *Washington State* 46
  U.S. v. *Wheeler* A–9
  U.S. v. *White Mountain Apache Tribe* A–9
  U.S. v. *Winans* A–10
  Washington v. *Washington St. Commercial Fishing* A–9
  Whitefoot v. *United States* A–9
  Winters v. *United States* 47, A–10
  Worcester v. *Georgia* 17, 34, A–9
Creek D–4

D

Discovery Doctrine 18

E

Environmental impact statement 55, 56
Executive Orders
  Indian Sacred Sites 65–66, A–19–A–20
  Protection and Enhancement of Cultural Environment A–7

F

Forest Service
  American Indian/Alaska Native policy vii, viii, xi, 1, 8, 43, 44, 45, 52, 53, 54, 60, 61, 62, 64
  FSM 1563 vii, 2, 33, 41, 52, 57, 59, 67, A–12. *See also* Appendix A
Freedom of Information Act 62, 65, 66

I

Indian 3
  Ceded lands 44
  Demographics 5–6, D–4
  Landholdings 3–4, 4, 5, 6, D–1
Indian Claims Commission 25. *See also* Laws: Indian-specific: Indian Claims Commission Act of 1946
Indian Country 3, 4, 20, 27
Indian Health Service 29
Indian religion 29, 36, 64. *See also* Traditional beliefs
Iroquois 5

K

Kenaitze 70
Kiowa 71

L

Land management 46, 54, 60
  And cooperation 53, 55–57, 58
  And cultural values 54, 55–57, 61, 63, 64, 65, 66
Laws 10
  General
    Act of May 18, 1796 11
    Alaska National Interest Lands Conservation Act 16, 47, 49–51, A–6, A–7
    Antiquities Act 62, A–6
    Appropriation Act 19, A–3
    Archeological and Historic Preservation Act 62, A–7
    Archeological Resources Protection Act 37, A–7
    Bankhead-Jones Act 13, A–5
    Economy Act 72
    Endangered Species Act 49, A–7
    Federal Advisory Committee Act A–21
    Federal Land Policy and Management Act 15, 38, A–6
    Fish and Wildlife Conservation Act A–5
    Forest Service Organic Act A–4, A–6
    Forest/Rangeland Renewable Resources Planning Act 15, 38, 61, A–5
    House Concurrent Resolution No. 108 A–4
    Interior and Related Agencies Appropriations Act 72
    Management of Museum Properties A–7
    Marine Mammal Protection Act 49
    Multiple-Use Sustained-Yield Act 14, A–5
    National Environmental Policy Act 15, 37, 40, 53–57, 55–57, 61, 72, A–5
    National Forest Management Act 15, 38, 40, 58, 61, A–6
    National Historic Preservation Act 40, 61, 64–65, A–6
    Northwest Ordinance 10, A–1
    Organic Administration Act 13, 20, 58
    Religious Freedom Restoration Act 29, 64
    Sikes Act 14
    Sustained Yield Forest Management Act 14, A–5
    Walrus Protection Act 49
    Weeks Law 13, A–5
  Indian-specific
    Alaska Native Allotment Act A–4
    Alaska Native Claims Settlement Act 15, 28, 40, 42–43, 47, A–6, A–7
    Allotment Act 13, 21, A–4
    American Indian Religious Freedom Act 15, 29, 40, 62–63, 63, A–7
    Court of Private Land Claims Act 13, A–4
    Dawes Act. *See* Laws: Indian-specific: General Allotment Act
    Embezzlement/Theft from Indian Tribal Orgs. A–7
    General Allotment Act (Dawes Act) 4, 12, 22, 24, A–3
    House Concurrent Resolution No. 108 26–27
    Indian Appropriations Act 12
    Indian Child Welfare Act 15, 29
    Indian Citizenship Act 13, 23, A–4
    Indian Civil Rights Act 14, 28, A–4, A–14. *See also* Appendix A
    Indian Claims Commission Act 14, 25–26, A–4
    Indian Health Care Improvement Act 16, 29
    Indian Removal Act 11, A–3, D–4
    Indian Reorganization Act 13, 24–25, 35, 40, 48, A–4, A–6
    Indian Self-Determination and Educ. Assist. Act 15, 28, 30, A–7
    Intercourse Act A–4
    Major Crimes Act 12, 23, A–3
    Menominee Restoration Act 15
    National Indian Forest Resource Management Act A–6
    Native American Grave Protection/ Repatriation Act 16, 29, 40, 64, A–7
    Non-Intercourse Act 11, 17, A–3, A–8
    Public Law 280 14, 27, 28
    Public Law 93–580 28
    Public Law 93–638 30
    Pueblo Lands Board Act 13, A–4
    Trade and Intercourse Act of 1793 11
    Trade and Intercourse Act of 1796 11
    Trade and Intercourse Act of 1799 11
    Trade and Intercourse Act of 1802 11
    Trade and Intercourse Act of 1834 12

M

Meriam Report 24

N

National Forest System xi, 1, 38, 44–47, 52, 53, 54, 58, 61, 62, 69, 70, 71, A–9–A–10. *See also* Treaty: Rights: on National Forest System Lands
National Register Bulletin 38 A–15, A–16. *See also* Laws: General: National Historic Preservation Act
Navajo 5, 71

O

Office of General Counsel 1

P

Peyote. *See* Laws: Indian-specific: American Indian Religious Freedom Act
Port Gamble S'Klallam 71

R

Research 69, 70
Reservation 3, 4, 5, 19, 20, 27, 42, D–1–D–4

S

Sacred sites 38, 66
Secretary of the Interior 22, 24, 29, 38, 41, 43, 47, 49, 51, 54, A–4, A–5, A–8, D–1
Seminole D–4
Sioux 5
State and Private Forestry vii, xi, 69, 70
Swinomish 4

T

Termination policies 26–27
Traditional beliefs 23, 59
  And land use 22, 46, 59, 60, 63, 66, 68, 69
  FS recognition of 29, 50, 60, 61, 63, 64, 66
  Funeral remains 29, 64
Traditional knowledge 68–69, 69, 70
Treaty 34, 42, 43–44, 44
  As Federal Law 19, 41, 44
  Canons of Construction 18
  Indian Nations with other nations A–1
  Rights xi, 36, 41, 41–58, 44, 44–45, 45, 55–57, 61, A–3, A–9
    Gathering 46
    Grazing 45
    Hunting and fishing 45–46
    Off-reservation 44, 45, 46, 54
    On National Forest System Lands 38, 44–47, 45, 52, A–9–A–10. *See also* Alaska Natives: Subsistence rights
    On-reservation 45
    Reserved 18, 54
    Reserved water 47, 52, 53, 58
    Water 36, 46, A–10–A–11
  U.S. with Indian Nations 18–19
    Treaty of Dancing Rabbit Creek A–3
    Treaty with Dwamish Suquamish 46
    Treaty with the Delawares 33, A–3
    Treaty with the Wyandots 44, A–3
  U.S. with other nations
    1966 Fur Seal Convention 49
    Migratory Bird Treaty 48
    Treat of Guadalupe Hidalgo 21
    Treaty of 1867 20, 48
    Treaty of Ghent A–8
    Treaty with France A–3
    Treaty with Great Britain A–3
    Treaty with Mexico A–3
Tribal government vii, 20–22, 23, 24, 28, 30–31, 62, 65
  Powers viii, 28, 35, 45, A–9
  Sovereignty of xi, 9, 10, 18, 19, 23, 27, 34, 34–35, 35, 43, A–1
  Working with 1, 45, 53, 64, 65, 67, 69, 70, 72
Tribal Summit 30, 53
Tribe 3
  Diversity of viii
  Federally Recognized 3, 5, 19, 22, 38, 43, 51, 52, 53, C–1–C–24
    Alaska Native Corporations 40
    Executive Order Tribes 40
    Treaty Indian Tribes 38
  Membership 3
  Non-Federally-Recognized Indian Groups 40
Tuolumne Me-wuk 71

U

U.S. American Indian/Alaska Native policy A–8
  1532–1789 9–10
  1789–1871 17–18, 18–19, 19, 19–20, 20
  1871–1928 22–27
  1928–1945 23–27
  1945–1961 25–27, 43
  1961–present 28–31, 43
  Government-to-government vii, xi, 1, 7, 30, 34, 52, 53
  Importance of historical 9
U.S. and Indian Nation relationship
  Fiduciary A–1
  Guardian-ward 10, 18, 34, 41, A–8
  Plenary powers 19, A–1
  Trust responsibilities 3, 28, 34, 41, 43, 44, 45, 51–53, A–8, D–1
U.S. Constitution 17, 34, 44, A–1–A–2, A–8
U.S. Supreme Court 30, 35
  Marshall, Chief Justice John 17, A–1, A–8, D–4

W

Washington, George 10

Z

Zuni 71

Forest Service
National Resource
Book on American
Indian and Alaska
Native Relations

FS-600